

**LEGISLATIVE JOURNAL**  
**OF THE**  
**STATE OF NEBRASKA**

**NINETY-SEVENTH LEGISLATURE**  
**THIRD SPECIAL SESSION**

**2002**

**Convened November 7, 2002**

**Adjourned November 22, 2002**

**LINCOLN, NEBRASKA**

**Compiled**

**Under the Authority of the Legislature**

**by**

**PATRICK J. O'DONNELL, CLERK**



## OFFICERS OF THE LEGISLATURE

Dave Heineman (Lt. Governor), President.....Fremont  
Curt Bromm, Speaker.....Wahoo  
Patrick J. O'Donnell, Clerk .....Lincoln  
Richard Brown, Assistant Clerk.....Lincoln  
Lynne Yost, Sergeant at Arms.....Lincoln

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## BILL STATUS, INDEX, AND JOURNAL CLERKS

.....Vicki Buck  
.....Beverly Foster  
.....Dallas Mehling  
.....Carol Koranda  
.....Stefanie Worm

## LEGISLATURE

### MEMBERS

Dist.	Name	Address	Occupation	Counties
1	Floyd P. Vrtiska .....	Table Rock.....	Semi-retired Farmer.....	Cass*, Johnson, Nemaha, Otoe*, Pawnee, Richardson
2	Roger R. Wehrbein.....	Plattsmouth .....	Farmer/Feeder.....	Cass*, Otoe*, Sarpy*
3	Ray Mossey.....	Papillion.....	State Senator.....	Sarpy*
4	Kermit A. Brashear .....	Omaha .....	Attorney.....	Douglas*
5	Donald Preister.....	Omaha .....	Joy Creations Greeting Card..... Manufacturer	Douglas*, Sarpy*
6	Pam Brown.....	Omaha .....	Consultant.....	Douglas*
7	John Synowiecki .....	Omaha .....	Government Liaison Catholic .....	Douglas*
			Charities	
8	Patrick Bourne.....	Omaha .....	Attorney.....	Douglas*
9	Chip Maxwell.....	Omaha .....	Development Director - Jesuit .....	Douglas*
			Middle School of Omaha	
10	Deborah S. Suttle .....	Omaha .....		Douglas*
11	Ernie Chambers .....	Omaha .....	Defender of the Downtrodden .....	Douglas*
12	Pamela Redfield .....	Omaha .....		Douglas*
13	Lowen Kruse .....	Omaha .....	Ordained Minister.....	Douglas*
14	Nancy Thompson .....	Papillion.....	State Senator.....	Sarpy*
15	Ray Janssen .....	Nickerson.....	Grocer .....	Dodge
16	Matt Connealy.....	Decatur.....	Farmer .....	Burt, Cuming, Stanton, Thurston, Washington*
17	Pat Engel .....	South Sioux City ..		Dakota, Dixon, Wayne

Dist.	Name	Address	Occupation	Counties
18	Douglas Cunningham	Wausa	Grocer	Douglas*, Washington*
19	Gene Tyson	Norfolk		Madison
20	Jim Jensen	Omaha	Contractor	Douglas*
21	Carol Hudkins	Malcolm	Farmer	Lancaster*, Saunders*
22	Jennie Robak	Columbus	Owner-Operator - RKR Foods Inc.	Colfax*, Platte
23	Curt Bromm	Wahoo	Attorney	Butler, Colfax*, Douglas*, Sarpy*, Saunders*
24	Elaine Stuhr	Bradshaw	Farmer	Polk*, Seward, York
25	Ron Raikes	Lincoln	Farmer	Lancaster*
26	Marian L. Price	Lincoln	Senator	Lancaster*
27	DiAnna Schimek	Lincoln		Lancaster*
28	Chris Beutler	Lincoln	Lawyer and Businessman	Lancaster*
29	Mike Foley	Lincoln	Corporate Planning Analyst	Lancaster*
30	Dennis Byars	Beatrice	Director of Advocacy and Government Relations - Martin Luther Home Society, Inc.	Gage, Lancaster*
31	Mark Quandahl	Omaha	Lawyer	Douglas*
32	George Coordsen	Hebron	Farmer	Fillmore, Jefferson, Saline, Thayer
33	Carroll Burling	Kenesaw	Farmer/Rancher	Adams, Hall*
34	Bob Kremer	Aurora	Farmer/Cattle Feeder	Hall*, Hamilton, Merrick, Nance, Polk*
35	Ray Aguilar	Grand Island	Self-employed - Commercial Cleaning Service	Hall*
36	Jim D. Cudaback	Riverdale	Rental Property Owner	Buffalo*, Dawson*
37	Joel T. Johnson	Kearney	Surgeon, Retired	Buffalo*, Kearney

Dist.	Name	Address	Occupation	Counties
38	Ed Schrock .....	Elm Creek .....	Farmer .....	Clay, Franklin, Gosper, Harlan, Nuckolls, Phelps, Webster
39	Dwite Pedersen.....	Elkhorn .....	Substance Abuse Counselor.....	Douglas*, Sarpy*, Washington*
40	Merton L. Dierks .....	Ewing .....	Rancher/Veterinarian.....	Cedar, Holt*, Knox, Pierce
41	Vickie D. McDonald .....	Rockville.....	Investment Banker .....	Antelope, Boone, Garfield, Greeley, Hall*, Howard, Sherman, Valley, Wheeler
42	Don Pederson .....	North Platte .....	Attorney .....	Lincoln
43	Jim Jones .....	Eddyville.....	Rancher.....	Blaine, Boyd, Brown, Cherry*, Custer, Holt*, Hooker, Keya Paha, Logan, Loup, McPherson, Rock, Thomas
44	Tom Baker .....	Trenton.....	Farmer - C Store Owner.....	Chase, Dawson*, Dundy, Frontier, Furnas, Hayes, Hitchcock, Perkins, Red Willow
45	D. Paul Hartnett.....	Bellevue .....	Consultant.....	Sarpy*
46	David Landis .....	Lincoln .....	College Instructor .....	Lancaster*
47	Philip Erdman .....	Bayard .....	Farmer .....	Arthur, Banner, Cheyenne, Deuel, Garden, Keith, Kimball, Morrill
48	Adrian Smith .....	Gering .....	Realtor .....	Scotts Bluff*
49	Fred Hlava .....	Gordon .....	City Manager/Cattle Producer .....	Box Butte, Cherry*, Dawes, Grant, Scotts Bluff*, Sheridan, Sioux

**Clerk**

Patrick J. O'Donnell . . . . Lincoln

## **RULES OF THE LEGISLATURE**

Rules in effect at the commencement of the Ninety-Seventh Legislature, Third Special Session, 2002, are the same rules in effect at the commencement of the Ninety-Eighth Legislature, First Session, 2003.





# **FIRST DAY - NOVEMBER 7, 2002**

## **LEGISLATIVE JOURNAL**

### **NINETY-SEVENTH LEGISLATURE THIRD SPECIAL SESSION**

#### **FIRST DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, November 7, 2002

#### **PRAYER**

The prayer was offered by Senator Coordsen.

#### **ROLL CALL**

Pursuant to a proclamation by the Honorable Governor of the State of Nebraska, Mike Johanns, the Ninety-Seventh Legislature, Third Special Session of the Legislature of Nebraska, assembled in the George W. Norris Legislative Chamber of the State Capitol, at the hour of 3:00 p.m., Thursday, November 7, 2002, and was called to order by President Heineman.

The roll was called and the following members were present:

Aguilar, Raymond	Foley, Mike	Raikes, Ronald E.
Baker, Thomas C.	Hartnett, D. Paul	Redfield, Pam
Beutler, Chris	Hudkins, Carol L.	Robak, Jennie
Bourne, Patrick J.	Janssen, Ray	Schimek, DiAnna R.
Brashear, Kermit	Jensen, Jim	Schrock, Ed
Bromm, Curt	Johnson, Joel T.	Smith, Adrian
Brown, Pam	Jones, James E.	Stuhr, Elaine
Burling, Carroll	Kremer, Bob	Suttle, Deborah S.
Byars, Dennis M.	Kruse, Lowen	Synowiecki, John F.
Chambers, Ernie	Maxwell, Chip	Thompson, Nancy
Connealy, Matt	McDonald, Vickie D.	Tyson, Gene
Coordsen, George	Pedersen, Dwite	Vrtiska, Floyd P.
Cudaback, Jim D.	Pederson, Don	Wehrbein, Roger R.
Cunningham, Douglas D.	Preister, Don	
Engel, L. Patrick	Price, Marian L.	
Erdman, Philip	Quandahl, Mark	

The following members were excused:

Dierks, Merton L.	Hlava, Fred	Landis, David M.
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**DECLARATION**

Pursuant to a proclamation issued by the Honorable Mike Johanns, Governor of Nebraska, we are here and now assembled in the Ninety-Seventh Legislature, Third Special Session of the Nebraska Legislature. I, as President of the Legislature, declare that we are now open for the transaction of business.

(Signed) Dave Heineman  
President of the Legislature

**PROCLAMATION**

WHEREAS, BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, Mike Johanns, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on November 7, 2002, at 3:00 p.m. for the purpose of considering and enacting legislation on only the following subjects:

1. To enact procedures for jury participation in the first degree murder sentencing process as required by the recent decision of the Supreme Court of the United States in *Ring v. Arizona*;
2. To enact procedures to establish lethal injection as a means of enforcing a sentence of death; and
3. To appropriate funds for the necessary expenses of the extraordinary session herein called.

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by presenting to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand, and cause the Great Seal of the State of Nebraska to be affixed this twenty-ninth day of October, in the year of our Lord Two Thousand Two.

(Signed) Mike Johanns  
Governor

Attest:

(Signed) John A. Gale  
Secretary of State

(SEAL)

## November 6, 2002

John A. Gale, Secretary of State

DISTRICT/NAME	ELECTED
1 Floyd P. Vrtiska	November 7, 2000
2 Roger R. Wehrbein	November 3, 1998
3 Vacant	
4 Kermit Brashear	November 3, 1998
5 Don Preister	November 7, 2000
6 Pam Brown	November 3, 1998
7 John F. Synowiecki	Appointed January 7, 2002
8 Patrick J. Bourne	November 3, 1998
9 Chip Maxwell	November 7, 2000
10 Deborah S. Suttle	November 3, 1998
11 Ernie Chambers	November 7, 2000
12 Pam Redfield	November 3, 1998
13 Lowen Kruse	November 7, 2000
14 Nancy Thompson	November 3, 1998
15 Ray Janssen	November 7, 2000
16 Matt Connealy	November 3, 1998
17 L. Patrick Engel	November 7, 2000
18 Douglas D. Cunningham	November 7, 2000
19 Gene Tyson	November 7, 2000
20 Jim Jensen	November 3, 1998
21 Carol L. Hudkins	November 7, 2000
22 Jennie Robak	November 3, 1998
23 Curt Bromm	November 7, 2000
24 Elaine Stuhr	November 3, 1998
25 Ronald E. Raikes	November 7, 2000
26 Marian L. Price	November 3, 1998
27 DiAnna R. Schimek	November 7, 2000
28 Chris Beutler	November 3, 1998
29 Mike Foley	November 7, 2000
30 Dennis M. Byars	November 3, 1998
31 Mark Quandahl	November 7, 2000
32 George Coordsen	November 3, 1998
33 Carroll Burling	November 7, 2000
34 Bob Kremer	November 3, 1998
35 Raymond Aguilar	November 7, 2000
36 Jim D. Cudaback	November 3, 1998
37 Joel T. Johnson	Appointed July 1, 2002
38 Ed Schrock	November 3, 1998
39 Dwite Pedersen	November 7, 2000
40 Merton L. Dierks	November 3, 1998
41 Vickie D. McDonald	Appointed August 10, 2001
42 Don Pederson	November 3, 1998
43 James E. Jones	November 7, 2000
44 Thomas C. Baker	November 3, 1998
45 D. Paul Hartnett	November 7, 2000
46 David M. Landis	November 3, 1998
47 Philip Erdman	November 7, 2000
48 Adrian Smith	November 3, 1998
49 Fred Hlava	Appointed June 6, 2002

**MOTION - Election of Officers**

Senator Coordsen moved that the following officers, recommended by the Executive Board, be elected to serve for the Ninety-Seventh Legislature, Third Special Session:

Clerk of the Legislature  
 Assistant Clerk of the Legislature  
 Sergeant at Arms

Patrick J. O'Donnell  
 Richard K. Brown  
 Lynne Yost

The motion prevailed.

**MOTION - Adjourn Sine Die**

Senator Chambers offered the following motion:  
 To adjourn sine die.

Senator Chambers requested a roll call vote on his motion to adjourn sine die.

Voting in the affirmative, 13:

Chambers	Hartnett	Pedersen, Dw.	Robak	Synowiecki
Coordsen	Kruse	Price	Schimek	
Foley	Maxwell	Raikes	Suttle	

Voting in the negative, 26:

Aguilar	Cunningham	Johnson	Redfield	Vrtiska
Baker	Engel	Jones	Schrock	Wehrbein
Bourne	Erdman	Kremer	Smith	
Brashear	Hudkins	McDonald	Stuhr	
Burling	Janssen	Pederson, D.	Thompson	
Byars	Jensen	Quandahl	Tyson	

Present and not voting, 6:

Beutler	Brown	Cudaback
Bromm	Connealy	Preister

Excused and not voting, 3:

Dierks	Hlava	Landis
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The Chambers motion to adjourn sine die failed with 13 ayes, 26 nays, 6 present and not voting, and 3 excused and not voting.

**MESSAGES FROM THE GOVERNOR**

August 29, 2002

President, Speaker Bromm  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been reappointed to the Nebraska Ethanol Board.

**APPOINTEE:**

Michael P. Alberts, 2004 E 24<sup>th</sup> Road, Marquette NE 68854

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

October 3, 2002

President, Speaker Bromm  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been appointed to the Environmental Quality Council.

**APPOINTEE:**

James D. Whitaker, 2311 Birchwood Rd, North Platte NE 69101

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

October 25, 2002

President, Speaker Bromm

and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individuals have been appointed to the Nebraska Investment Council.

APPOINTEES:

Earl Scudder, 9301 E Pioneer Blvd, Lincoln NE 68520  
Gail Werner-Robertson, 1215 N 136<sup>th</sup> St, Omaha NE 68154

The aforementioned names are respectfully submitted for your consideration.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

October 25, 2002

President, Speaker Bromm  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been reappointed as the Property Tax Administrator.

APPOINTEE:

Catherine D. Lang, 5932 Fieldcrest Way, Lincoln NE 68512

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

October 25, 2002

President, Speaker Bromm  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been appointed to the State Electrical Board.

**APPOINTEE:**

George M. Morrissey, 4327 N 142<sup>nd</sup> St, Omaha NE 68164

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

October 25, 2002

President, Speaker Bromm  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been appointed as the State Investment Officer.

**APPOINTEE:**

Carol Kontor, 9847 Harney Parkway South, Omaha NE 68114

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

**ATTORNEY GENERAL'S OPINIONS**

Opinion #02026

DATE: September 23, 2002

SUBJECT: Wrongful Death Action in the Case of an Unborn Child

REQUESTED BY: Senator Mike Foley  
Nebraska State Legislature



WRITTEN BY: Don Stenberg, Attorney General  
Mark D. Starr, Assistant Attorney General

QUESTION: Could a person successfully litigate a civil action for the wrongful death of an unborn child in this state?

CONCLUSION: Probably not.

You observe that most of the states have established the right to maintain civil wrongful death actions in the case of unborn children. You further point out that with the exception of Tennessee, which created the right by legislative action, the states did this by judicial decision. Finally, you cite to the passage of LB 824 (97th. Leg., 2nd Sess. 2002), the Homicide of the Unborn Child Act, which, with certain exceptions, makes it a crime to kill or cause the death of an unborn child. In view of these things, you ask whether a person could successfully bring a civil action for the wrongful death of an unborn child in Nebraska, or whether legislation would be necessary to establish such a cause of action.

We believe it unlikely that a person could successfully litigate a wrongful death suit for the death of an unborn child in this state. The Nebraska Supreme Court has consistently held that legislative action would be required before a wrongful death action would be recognized in such circumstances. *Smith v. Columbus Community Hospital, Inc.*, 222 Neb. 776, 387 N.W.2d 490 (1986), *Egbert v. Wenzl*, 199 Neb. 573, 260 N.W.2d 480 (1977), and *Drabbels v. Skelly Oil Co.*, 155 Neb. 17, 50 N.W.2d 229 (1951). The court reasoned that at common law an unborn child was not recognized as a person insofar as the law of torts was concerned and that while the legislature was free to change that, it had not done so. Quoting from its 1977 *Egbert* decision, the court wrote, "[i]n the 26 years since *Drabbels* was decided, the Nebraska legislature has not acted to include a viable fetus within the definition of person under section 30-809, R.R.S. 1943 [the wrongful death statute]." *Smith*, 222 Neb. at 779, 387 N.W.2d at 492.

At the time *Smith* was decided the legislature had clearly indicated an intention to protect an unborn fetus to the extent allowed by U.S. Supreme Court decisions. See Neb. Rev. Stat. § 28-325 (1) (1995). This apparently was not enough to convince the court to veer from its prior course. Nor was the court persuaded by scientific advances which had made it possible to supply evidence of causation between alleged prenatal injury and damage. That a majority of the states had recognized wrongful death actions for prenatal injury causing stillbirth of a viable fetus carried no weight, either. 222 Neb. at 781, 387 N.W.2d at 493 (dissent of Judge Shanahan). *Drabbels*, *Egbert* and *Smith* clearly placed the ball in the legislature's court, but now, 16 years after *Smith*, and 51 years after *Drabbels*, the wrongful death statute is essentially unchanged. Consequently, if once again confronted with the question, the court is apt to invoke the proposition that "[w]here a statute has been judicially construed and that construction has not evoked an

amendment, it will be presumed that the Legislature has acquiesced in the court's determination of the Legislature's intent." Paulk v. Central Laboratory Associates, P.C., 262 Neb. 838, 851, 636 N.W.2d 170, 181 (2001) (citations omitted).

Where the cause of action is a legislatively designed one and the legislature has apparently acquiesced in the court's interpretation of that design, the court will generally not engage in its own remodeling. It is doubtful that the enactment of the Homicide of the Unborn Child Act will cause the court to depart from its prior decisions. Holding a person accountable to the state under the criminal laws presents different issues than are involved in the civil tort arena. The court will probably be of the view that if the legislature wanted to expand the wrongful death cause of action to encompass injury to a fetus, it was, and remains, the legislature's prerogative.

Sincerely,  
Don Stenberg  
Attorney General  
(Signed) Mark D. Starr  
Assistant Attorney General

cc: Patrick O'Donnell  
Clerk of the Legislature  
26-233-21

Opinion #02027

DATE: October 25, 2002

SUBJECT: Authority Of The State Treasurer To Implement A  
Centralized Receipt And Deposit System For State  
Monies Without Additional Legislation.

REQUESTED BY: Senator Pam Brown  
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General  
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you indicate that you are contemplating introducing legislation at the next legislative session which would authorize the Nebraska State Treasurer to manage a centralized receipt and deposit system for checks and other funds received by state agencies. You describe that system in the following terms:

... all payments to state agencies would be assigned a specific post office box. The unique box number would identify the receipting agency and type of payment. The envelopes would be opened on automated equipment, contents extracted, contents imaged, images sent to the appropriated agency personnel, the checks encoded for bank deposit and the accounting document prepared for DAS Accounting. The paper contents of each envelope (minus the check) could than (sic) be routed to the appropriate agency personnel if requested.

You pose two questions to us regarding the proposed centralized receipt and deposit system.

Question No. 1. "Is Legislation authorizing the State Treasurer to manage a centralized receipt and deposit system even necessary or does the State Treasurer already have the power to implement such a system pursuant to his or her duties prescribed in Neb. Rev. Stat. sec. 84-602?"

As noted in your opinion request letter, the statutory duties of the Nebraska State Treasurer are set out generally at Neb. Rev. Stat. § 84-602 (1999). The portion of that statute which is pertinent to your inquiry states that it shall be the duty of the State Treasurer to "receive and keep all money of the state not expressly required to be received and kept by some other person." Therefore, to respond to your initial question, we must determine whether, in our view, that statutory language is sufficient to authorize the Treasurer to implement the centralized receipt and deposit system described in your opinion request.

As a general rule, state officers, boards and agencies have such powers as are delegated to them by express constitutional and statutory provisions, or as may be implied from the nature of particular duties imposed upon them. 81A C.J.S. States § 120; Op. Att'y Gen. No. 00002 (January 4, 2000). Executive officers generally have no powers beyond those granted by express provision or necessary implication. *Id.* In the present case, the general language of § 84-602 at issue does not expressly authorize the State Treasurer to implement the centralized system of receipts and deposits described in your request letter. As a result, any authority for the Treasurer to implement that system must be necessarily implied from the language of § 84-602 which authorizes the Treasurer to "receive and keep all money of the state."

On balance, we believe that it is doubtful that the authority to establish a centralized receipt and deposit system of the complexity described in your opinion request can be necessarily implied from the Treasurer's authority in § 84-602. For one thing, that type of system, which would seem to even affect the State's mail deliveries, does not appear to be required for the Treasurer to receive and keep the State's money. In addition, the Accounting Division of the Department of Administrative Services has promulgated the Nebraska Accounting System Manual under authority of Neb. Rev. Stat. § 81-1111 (1999), and that manual contains procedures for the receipt and deposit of monies with the State Treasurer by state agencies. Nebraska Accounting System Manual, Processing Procedures, PROC-120. It is difficult to argue that

the authority for a centralized receipt and deposit system is necessarily implied under the general language of § 84-602 when a system already exists for the receipt of state monies under authority of other state statutes. As a result, we do not believe that the State Treasurer has clear statutory authority to establish the centralized receipt and deposit system described in your opinion request under § 84-602, and you may wish to move forward with legislation in that area if you believe that the Treasurer should have such authority.

Question No. 2. "Are there any other constitutional or other legal impediments relative to the State Treasurer managing such a system?"

Your second question does not indicate what constitutional or other legal impediments are the subject of your concern. Therefore, absent any indication of what specific legal problems are at issue, our response to that question must necessarily be general. Op. Att'y Gen. No. 00002 (January 4, 2002); Op. Att'y Gen. No. 98040 (September 11, 1998). With that in mind, we are unaware of any constitutional or other legal impediments relative to the State Treasurer managing the centralized receipt and deposit system described in your correspondence, provided the Treasurer has specific statutory authority to do so. However, given the provisions in the Nebraska Accounting Systems Manual noted above, we do suggest that any new statutes in this area take into account their interface with the existing statutes and regulations pertaining to the functions of the Accounting Division of the Department of Administrative Services. In addition, any new statutes in this area should also take into account any other existing statutes giving specified agencies or officers the authority to receive state monies.

Sincerely yours,  
DON STENBERG  
Attorney General  
(Signed) Dale A. Comer  
Assistant Attorney General

cc. Patrick O'Donnell  
Clerk of the Legislature  
05-129-21

Opinion #02028

DATE: November 5, 2002

SUBJECT: Private Prison Contracting Act

REQUESTED BY: Senator Ray Aguilar  
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General  
Mark D. Starr, Assistant Attorney General

- QUESTIONS:
1. Does the Private Prison Contracting Act apply where a county wants to make its county jail available for the placement of "contract inmates"?
  2. Does the Act apply to a private/public partnership formed to design, finance, and build a county owned correctional facility which is to be managed by a private entity under the supervision of a county board of corrections or a county sheriff?

- CONCLUSION:
1. Not for the most part.
  2. The Act applies to the extent it expressly withholds authorization for such a project.

The Private Prison Contracting Act, Neb. Rev. Stat. §§ 47-801 to 47-807 (2001 Supp.), allows the Nebraska Department of Correctional Services to use the services of private prison contractors, either as managers of the Department's own facilities or, if certain need-based criteria are met, as builders and operators of private correctional facilities. The Act indicates that if such private contractors are to be used, then various, specified contract provisions must be included to ensure proper operation and oversight of the facility and to minimize or eliminate the State's liability.

You ask if the Act applies to a county correctional facility which desires to open its doors on a contract basis to inmates committed to the Department. In our opinion, the Act really does not address the use of county correctional facilities for the placement of such inmates. If it touches upon the subject at all, it is in Neb. Rev. Stat. § 47-802(1), which begins: "The Department of Correctional Services is authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Correctional Services." The paragraph sets forth various services which are to be afforded inmates assigned to such facilities, and then goes on to specify that "[s]uch services, if provided by private prison contractors, shall be contracted for as required by the Private Prison Contracting Act." The paragraph concludes with the statement that inmates incarcerated in a correctional institution operated under this subsection shall be treated as reasonably and humanely as inmates in institutions of the Department. The rest of the Act is essentially devoted to the subject of private prison contractors.

Next, you ask whether the Act applies to a public/private partnership to construct a county owned jail facility which may be placed under private management under the supervision of the county board of corrections or the county sheriff. We believe the Act applies to the extent it expressly withholds authorization from such an arrangement. According to Neb. Rev. Stat. § 47-806, the Act "does not authorize a county or other political subdivision to enter into a contract with a private prison contractor to construct or operate a correctional facility within or on behalf of such county or other political

subdivision." According to Senator Schimek, the introducer of the legislation, this section was added to clarify that a private prison "has to be done through the state and with the approval of the Department of Corrections". Floor Debate on LB 85, 97th Neb. Leg., 1st Sess. 8355 (May 29, 2001).

Sincerely,  
 Don Stenberg  
 Attorney General  
 (Signed) Mark D. Starr  
 Assistant Attorney General

cc: Patrick O'Donnell  
 Clerk of the Legislature

## REPORTS

The following reports were received by the Legislature:

### **Administrative Services, Department of**

Annual Budgetary Report for year ended June 30, 2002  
 Information Technology Commission Project Status Summary, July 2002  
 Risk Management/State Claims Board, State Tort Claims Act and State  
 Miscellaneous Claims Act Report, July 1, 2001 to June 30, 2002  
 Risk Management, Workers' Compensation Act Report, 2002

### **Agriculture, State Board of**

2001 Proceedings, Annual Meeting

### **Auditor of Public Accounts**

Audit reports for the following:

Administrative Services, Department of, Program 173 - Division of  
 Communications, FY 2002  
 Dairy Industry Development Board, FY 2002  
 Environmental Quality, Department of, FY 6/30/02  
 Health and Human Services System, Western Nebraska Veterans' Home,  
 FY 2002  
 Retirement System, Public Employees, Deferred Compensation Plan,  
 FY 2001  
 Retirement Systems, Public Employees, State and County Employees  
 Retirement Plans, FY 2001  
 Revenue, Department of, Charitable Gaming Investigation Petty Cash  
 Fund, FY 2002  
 Revenue, Department of, Cigarette Tax Receipts, FY 2002  
 Revenue, Department of, Motor Fuel Tax Enforcement and Collection  
 Division, FY 2002

### **Criminal Justice, Commission on Law Enforcement and**

Annual Report 2001

### **Economic Development, Department of**

Proposed 2003 Annual Action Plan of Housing and Community  
 Development Programs  
 Proposed 2001 Annual Performance Report for the Nebraska Housing and  
 Community Development Programs Consolidated Plan

**Fire Marshal, State**

Volunteer Emergency Responders Recruitment and Retention Act

**Government, Military and Veterans Affairs Committee, Legislative**

2002 Nebraska Boards and Commissions Report

**Health and Human Services System**

Newborn Screening Program and Newborn Hearing Screening Program

2001 Annual Report

Office of the System Advocate Quarterly Report, July - September 2002

Office of Women's Health Annual Report 2001-2002

**Investment Council**

10-year cash flow projection for the Health Care Endowment Fund

**Investment Finance Authority**

1999 Series A-1, A-2, B-1, B-2, C-1, C-2, D-1 and D-2 Community Development Loan Notes (City of Lincoln Program - 1999)

2002 Series D, E & F Single Family Housing Revenue Bonds

Agricultural First-Time Farmer Program Report

Drinking Water State Revolving Fund Revenue Bonds Series 2001 A

State Revolving Fund Revenue Bonds for the Wastewater Treatment Facilities (Clean Water) State Revolving Fund Program

**Insurance, Department of**

Interstate Insurance Receivership Commission 2001 Annual Report

**Legislative Fiscal Office**

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2002. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced July 18, 2002. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

**Legislative Program Evaluation Committee**

Legislative Program Evaluation Committee Annual Report, Fiscal Year 2001-2002

**Natural Resources, Department of**

2002 Biennial Nebraska Resources Development Fund Report

Annual Report and Plan of Work for the Nebraska State Water Planning and Review Process

**Policy Research Office, Governor's**

Municipal Natural Gas Regulation Revolving Loan Fund Quarterly Report, July 1, 2002 through September 30, 2002

**Power Review Board**

2002 'Condition Certain' Annual Report

**Public Service Commission**

Nebraska Public Service Commission's 2001 Annual Report on Telecommunications

Nebraska Telecommunications Industry Annual Report

**Revenue, Department of**

Nebraska Lottery Annual Report, July 1, 2001 through June 30, 2002

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2002. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced July 18, 2002. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

Tax Expenditure Report and Summary for 2002

**Roads, Department of**

Board of Public Roads Classifications and Standards Minutes for July 2002

State Highway Commission Quarterly Report as of September 30, 2002

**Supreme Court**

Office of Probation Administration's 2000-2001 Biennial Report

**UNANIMOUS CONSENT - Member Excused**

Senator Suttle asked unanimous consent to be excused. No objections. So ordered.

**MOTION - Notify Governor**

Senator Vrtiska moved that a committee of five be appointed to notify the Governor that the Legislature is now convened, organized, and ready for the transaction of business and to return with any message the Governor may have for this, the Ninety-Seventh Legislature, Third Special Session of the Nebraska Legislature.

The motion prevailed.

The Chair appointed Senators Hudkins, Aguilar, Bourne, Kremer, and Burling to serve on said committee.

The committee returned and escorted Governor Mike Johanns to the rostrum where he delivered a message to the members.

The committee escorted Governor Johanns from the Chamber.

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 1.** Introduced by Speaker Bromm, 23; at the request of the Governor.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 29-1602, 29-2520, 29-2521, 29-2522, and 29-2524, Reissue Revised Statutes of Nebraska; to change procedures relating to information and sentencing for capital crimes; to provide intent; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 2.** Introduced by Speaker Bromm, 23; at the request of the Governor.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532, 29-2533, 29-2542, and 29-2543, Reissue Revised Statutes of Nebraska; to change the method of inflicting the death penalty; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.



**LEGISLATIVE BILL 3.** Introduced by Speaker Bromm, 23; at the request of the Governor.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-seventh Legislature, Third Special Session, 2002; and to declare an emergency.

**LEGISLATIVE BILL 4.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 29-2519, 29-2520, 29-2522, and 29-2524, Reissue Revised Statutes of Nebraska, and sections 28-101 and 29-2523, Revised Statutes Supplement, 2002; to provide intent; to provide for a capital offense and change sentencing procedures as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 5.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 6.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 7.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 8.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 9.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 10.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 11.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to crimes and offenses; to prohibit imposition of the death penalty as prescribed.

**LEGISLATIVE BILL 12.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 13.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to homicide; to amend section 28-302, Reissue Revised Statutes of Nebraska; to redefine a term; and to repeal the original section.

**LEGISLATIVE BILL 14.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 15.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 16.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 17.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 18.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

**LEGISLATIVE BILL 19.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 23-3406, 24-1106, 25-1140.09, 27-609, 28-104, 28-303, 29-1822, 29-2005, 29-2006, 29-2020, 29-2282, 29-2407, 29-2801, 29-3205, 29-3928, and 55-480, Reissue Revised Statutes of Nebraska, and sections 27-803, 28-105, 29-3920, 29-3922, 29-3929, 29-3930, 29-3931, and 83-4,143, Revised Statutes Supplement, 2002; to change a penalty from death to maximum of life imprisonment without possibility of parole; to provide for restitution and standards for sentencing; to harmonize provisions; to eliminate capital punishment provisions; to repeal the original sections; and to outright repeal sections 24-1105, 29-2519 to 29-2521.01, 29-2521.03 to 29-2522, 29-2524 to 29-2524.02, 29-2527, 29-2528, 29-2532 to 29-2546, 29-2811, and 83-1,132, Reissue Revised Statutes of Nebraska, and sections 28-105.01, 29-2521.02, 29-2523, and 29-2525, Revised Statutes Supplement, 2002.

**RESOLUTIONS**

**LEGISLATIVE RESOLUTION 1.** Introduced by Thompson, 14.

WHEREAS, the Papillion-La Vista Girls' Softball Team entered the 2002 season as the seven-time defending Class A state softball champions; and

WHEREAS, on October 21, 2002, the Papillion-La Vista Girls' Softball Team won its eighth consecutive Class A state softball championship in an exciting come-from-behind victory; and

WHEREAS, Head Coach Mike Govig and the members of the Papillion-La Vista Girls' Softball Team achieved this exceptional accomplishment through their hard work, resolve, and team play.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature recognizes and congratulates coaches and members of the 2002 Papillion-La Vista Monarchs Girls' Softball Team for their outstanding accomplishments.

2. That a copy of this resolution be sent to the Papillion-La Vista Girls' Softball Team and Head Coach Mike Govig.

Laid over.

**LEGISLATIVE RESOLUTION 2.** Introduced by Thompson, 14.

WHEREAS, The Papillion-La Vista High School marching band competed at the Nebraska State Bandmasters Association State Marching competition on October 26, 2002; and

WHEREAS, for the third straight year the Monarchs received a superior rating at this band competition; and

WHEREAS, this also marked the third straight week of receiving a superior rating at a band competition; and

WHEREAS, the Monarchs will be competing at the Outback Bowl competition in Tampa, Florida, later this year; and

WHEREAS, Band Director Bill Kellett and the members of the Papillion-La Vista High School marching band achieved this outstanding accomplishment through their hard work and commitment to excellence.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature recognizes and congratulates the members of the 2002 Papillion-La Vista High School marching band for their exceptional accomplishments.

2. That a copy of this resolution be sent to the Papillion-La Vista High School marching band and Band Director Bill Kellett.

Laid over.

### EASE

The Legislature was at ease from 4:08 p.m. until 4:12 p.m.

### BILLS ON FIRST READING

The following bills were read for the first time by title:

**LEGISLATIVE BILL 20.** Introduced by Beutler, 28.

A BILL FOR AN ACT relating to murder in the first degree; to amend sections 28-303, 29-2027, 29-2519 to 29-2521, 29-2521.03, 29-2522, 29-2524, 29-2527, 29-2528, 29-2532, 29-2533, 29-2542, 29-2543, and 83-1,105.01, Reissue Revised Statutes of Nebraska, and sections 28-105 and 29-2523, Revised Statutes Supplement, 2002; to change penalty provisions; to provide for a jury determination on aggravating circumstance; to change and eliminate provisions relating to a sentencing panel of judges; to change provisions relating to sentencing proceedings; to change provisions relating to postconviction proceedings; to change the method of inflicting the death penalty; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 21.** Introduced by Raikes, 25.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-303 and 28-304, Reissue Revised Statutes of Nebraska; to reclassify a category of murder in the first degree; and to repeal the original sections.

**LEGISLATIVE BILL 22.** Introduced by Raikes, 25.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-303, Reissue Revised Statutes of Nebraska; to eliminate a category of murder in the first degree; and to repeal the original section.

**RESOLUTION****LEGISLATIVE RESOLUTION 3CA.** Introduced by Beutler, 28.

THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION, RESOLVE THAT:

Section 1. At the general election in November 2004 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article IV, section 13:

IV-13 "(1) The Legislature shall provide by law for the establishment of a Board of Parole and the qualifications of its members. ~~Said~~ The board, or a majority thereof, shall have power to grant paroles after conviction and judgment, under such conditions as may be prescribed by law, for any offenses committed against the criminal laws of this state except treason and cases of impeachment.

(2) The Governor, Attorney General, and Secretary of State, sitting as a board, shall have power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment. The board shall not pardon or commute the sentence of an offender sentenced to life imprisonment without parole unless the board is unanimous in its decision to pardon or commute and either (a) the offender is elderly, permanently infirm, or permanently disabled and the offender poses no threat to the public safety or (b) based on newly discovered evidence presented to the board, a reasonable doubt as to the offender's guilt is created. The Board of Parole may advise the Governor, Attorney General, and Secretary of State on the merits of any application for remission, respite, reprieve, pardon, or commutation, but such advice shall not be binding on them.

(4) The Governor shall have power to suspend the execution of the sentence imposed for treason until the case can be reported to the Legislature at its next session, when the Legislature shall either grant a pardon, or commute the sentence or direct the execution, or grant a further reprieve."

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

"A constitutional amendment to place restrictions on the power of the board of pardons in commuting a sentence of life imprisonment without parole or pardoning an offender sentenced to life imprisonment without parole.

For  
Against".

Referred to the Reference Committee.

### **REFERENCE COMMITTEE REPORT**

The Legislative Council Executive Board submits the following report:

<b>LB/LR</b>	<b>Committee</b>
LB 1	Judiciary
LB 2	Judiciary
LB 3	General File
LB 4	Judiciary
LB 5	Judiciary
LB 6	Judiciary
LB 7	Judiciary
LB 8	Judiciary
LB 9	Judiciary
LB 10	Judiciary
LB 11	Judiciary
LB 12	Judiciary
LB 13	Judiciary
LB 14	Judiciary
LB 15	Judiciary
LB 16	Judiciary
LB 17	Judiciary
LB 18	Judiciary
LB 19	Judiciary
LB 20	Judiciary
LB 21	Judiciary
LB 22	Judiciary
LR 3CA	Judiciary

Alberts, Michael P. - Nebraska Ethanol Board - Natural Resources

Kontor, Carol - State Investment Officer - Nebraska Retirement Systems

Lang, Catherine D. - Property Tax Administrator - Revenue

Morrissey, George M. - State Electrical Board - General Affairs

Scudder, Earl - Nebraska Investment Council - Nebraska Retirement Systems

Werner-Robertson, Gail - Nebraska Investment Council - Nebraska Retirement Systems

Whitaker, James D. - Environmental Quality Council - Natural Resources

(Signed) George Coordsen, Chairperson  
Legislative Council  
Executive Board

### **VISITORS**

Visitors to the Chamber were Hannah and Paige Berryman from Papillion; and a group of citizens who are members of the "Nebraskans Against the Death Penalty."

### **ADJOURNMENT**

At 4:25 p.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, November 8, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature





## SECOND DAY - NOVEMBER 8, 2002

### LEGISLATIVE JOURNAL

### NINETY-SEVENTH LEGISLATURE THIRD SPECIAL SESSION

#### SECOND DAY

Legislative Chamber, Lincoln, Nebraska  
Friday, November 8, 2002

#### PRAYER

The prayer was offered by Senator Price.

#### ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senators Bourne, Dierks, Hartnett, Hlava, Landis, Preister, Suttle, Vrtiska, and Wehrbein who were excused.

#### CORRECTIONS FOR THE JOURNAL

The Journal for the first day was approved.

#### NOTICE OF COMMITTEE HEARINGS

**Judiciary**  
Room 1113

LB 1	Tuesday, November 12, 2002	10:00 a.m.
LB 20	Tuesday, November 12, 2002	10:00 a.m.
LB 19	Tuesday, November 12, 2002	10:00 a.m.
LR 3CA	Tuesday, November 12, 2002	10:00 a.m.
LB 15	Tuesday, November 12, 2002	10:00 a.m.
LB 17	Tuesday, November 12, 2002	10:00 a.m.
LB 21	Tuesday, November 12, 2002	10:00 a.m.
LB 22	Tuesday, November 12, 2002	10:00 a.m.
LB 8	Tuesday, November 12, 2002	10:00 a.m.

(Signed) Kermit A. Brashear, Chairperson

**Natural Resources**  
Room 1525

Tuesday, November 12, 2002

10:00 a.m.

Michael P. Alberts - Nebraska Ethanol Board  
James D. Whitaker - Environmental Quality Council

(Signed) Ed Schrock, Chairperson

## RESOLUTIONS

### **LEGISLATIVE RESOLUTION 4.** Introduced by Foley, 29.

WHEREAS, Brian Bartels has earned the rank of Eagle Scout in the Boy Scouts of America, that organization's highest rank; and

WHEREAS, Brian Bartels is a member of Boy Scout Troop 54 of the Cathedral of the Risen Christ; and

WHEREAS, in achieving this rank, Brian Bartels advanced through five ranks and earned 36 merit badges when only 21 are required; and

WHEREAS, for his Eagle Scout project, Brian Bartels installed drain tiles around playground equipment in Porter Ridge Park in Lincoln; and

WHEREAS, Brian Bartels was awarded the Heroism Award after helping to save the life of a young child; and

WHEREAS, fewer than four percent of all boys who join the Boy Scouts attain the rank of Eagle Scout; and

WHEREAS, Brian Bartels has achieved great success as an exemplary member of the Scouting program and has represented his troop and community with excellence; and

WHEREAS, a Court of Honor was held for Brian Bartels on Sunday, September 22, 2002, at Cathedral of the Risen Christ Catholic Church, at which time Brian was presented with the Eagle Scout Badge.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature commends Brian Bartels for his dedication, perseverance, and hard work in obtaining this distinguished rank.

2. That a copy of this resolution be sent to Brian Bartels.

Laid over.

### **LEGISLATIVE RESOLUTION 5.** Introduced by Foley, 29.

WHEREAS, Park Sloup has earned the rank of Eagle Scout in the Boy Scouts of America, that organization's highest rank; and

WHEREAS, Park Sloup is a member of Boy Scout Troop 54 of the Cathedral of the Risen Christ; and

WHEREAS, in achieving this rank, Park Sloup advanced through five ranks and earned 34 merit badges when only 21 are required; and

WHEREAS, for his Eagle Scout project, Park Sloup installed three English Garden Gates at the Folsom Children's Zoo and Botanical Gardens; and

WHEREAS, fewer than four percent of all boys who join the Boy Scouts attain the rank of Eagle Scout; and

WHEREAS, Park Sloup has achieved great success as an exemplary member of the Scouting program and has represented his troop and community with excellence; and

WHEREAS, a Court of Honor was held for Park Sloup on Sunday, October 13, 2002, at Cathedral of the Risen Christ Catholic Church, at which time Park was presented with the Eagle Scout Badge.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature commends Park Sloup for his dedication, perseverance, and hard work in obtaining this distinguished rank.

2. That a copy of this resolution be sent to Park Sloup.

Laid over.

### **BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 23.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532, 29-2533, 29-2542, and 29-2543, Reissue Revised Statutes of Nebraska; to change the manner of carrying out a sentence of death; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 24.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532, 29-2533, and 29-2543, Reissue Revised Statutes of Nebraska; to change the manner of carrying out a sentence of death to death by old age; to harmonize provisions; to repeal the original sections; to outright repeal section 29-2542, Reissue Revised Statutes of Nebraska; and to declare an emergency.

**LEGISLATIVE BILL 25.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532, 29-2533, 29-2542, and 29-2543, Reissue Revised Statutes of Nebraska; to change the manner of carrying out a sentence of death to decapitation by guillotine; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 26.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532 to 29-2534, Reissue Revised Statutes of Nebraska; to require the Governor, Attorney General, and Secretary of State to be present during executions; and to repeal the original sections.

**NOTICE OF COMMITTEE HEARING**

**Revenue**  
Room 1524

Tuesday, November 12, 2002  
Catherine D. Lang - Property Tax Administrator

1:30 p.m.

(Signed) George Coordsen, Vice Chairperson

**REFERENCE COMMITTEE REPORT**

The Legislative Council Executive Board submits the following report:

<b>LB/LR</b>	<b>Committee</b>
LB 23	Judiciary
LB 24	Judiciary
LB 25	Judiciary
LB 26	Judiciary

(Signed) George Coordsen, Chairperson  
Legislative Council  
Executive Board

**VISITORS**

Visitors to the Chamber were FFA members and advisor from Norris High School; and Schmall and Jobman family members and guests from Bayard.

**ADJOURNMENT**

At 9:35 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Tuesday, November 12, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature

**THIRD DAY - NOVEMBER 12, 2002****LEGISLATIVE JOURNAL****NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION****THIRD DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, November 12, 2002

**PRAYER**

The prayer was offered by Senator Jones.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senators Bourne, Brown, Dierks, Engel, Dw. Pedersen, Preister, Suttle, and Thompson who were excused.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the second day was approved.

**ANNOUNCEMENT**

Senator Brashear announced the Judiciary Committee elected Senator Quandahl as Vice Chairperson.

**MOTION – Suspend Rules**

Senator Brashear offered the following motion:  
Suspend the rules, Rule 9, Section 4, to permit the holding of public hearings on certain bills, which were referenced to the Judiciary Committee on November 7 and 8, 2002, more than five calendar days after the referencing of said bills, but no later than November 15, 2002.

The Brashear motion to suspend the rules prevailed with 38 ayes, 0 nays, 2 present and not voting, and 8 excused and not voting.

**NOTICE OF COMMITTEE HEARING**

**Judiciary**  
Room 1113

LB 2	Wednesday, November 13, 2002	9:00 a.m.
LB 23	Wednesday, November 13, 2002	9:00 a.m.
LB 24	Wednesday, November 13, 2002	9:00 a.m.
LB 25	Wednesday, November 13, 2002	9:00 a.m.
LB 5	Wednesday, November 13, 2002	9:00 a.m.
LB 6	Wednesday, November 13, 2002	9:00 a.m.
LB 7	Wednesday, November 13, 2002	9:00 a.m.
LB 9	Wednesday, November 13, 2002	9:00 a.m.
LB 10	Wednesday, November 13, 2002	9:00 a.m.
LB 12	Wednesday, November 13, 2002	9:00 a.m.
LB 14	Wednesday, November 13, 2002	9:00 a.m.
LB 18	Wednesday, November 13, 2002	9:00 a.m.

(Signed) Kermit A. Brashear, Chairperson

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 27.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to mitigating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 28.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to mitigating circumstances; to eliminate and provide a burden of proof with respect to mitigating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 29.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 30.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change

provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 31.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 32.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 33.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 34.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 35.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 36.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder in the first degree; to amend section 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to aggravating circumstances; and to repeal the original section.

**LEGISLATIVE BILL 37.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 28-303 and 29-2520, Reissue Revised Statutes of Nebraska; to require

proof to a certainty before imposition of the death penalty; and to repeal the original sections.

**LEGISLATIVE BILL 38.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 25 -1601 and 29-2006, Reissue Revised Statutes of Nebraska; to change juror competency and challenge provisions; and to repeal the original sections.

**LEGISLATIVE BILL 39.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to crimes and offenses; to prohibit convictions based on certain evidence.

### REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

<b>LB/LR</b>	<b>Committee</b>
LB 27	Judiciary
LB 28	Judiciary
LB 29	Judiciary
LB 30	Judiciary
LB 31	Judiciary
LB 32	Judiciary
LB 33	Judiciary
LB 34	Judiciary
LB 35	Judiciary
LB 36	Judiciary
LB 37	Judiciary
LB 38	Judiciary
LB 39	Judiciary

(Signed) George Coordsen, Chairperson  
Legislative Council  
Executive Board

### VISITORS

Visitors to the Chamber were delegates Pablo Belardinelli, Simon Bestani, Andres Borthagaray, Gaston Guarracino, Carolina Stanley, and Pablo Valles from Argentina, Guzman Acosta Y Lara, Professor Gloria Amido, Daniel Bianchi, Alfredo Susena, Dr. Miguel Angel Crosa, and Dr. Gonzalo Grana from Uruguay, State Department interpreters, Ana Aray, Javier Macias, and Dr. Hoyt Rogers, ACYPL staff member, Ken Insley, and host, Fiona Lisback, from Nebraska.



**ADJOURNMENT**

At 9:27 a.m., on a motion by Senator Aguilar, the Legislature adjourned until 9:00 a.m., Wednesday, November 13, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature



# **FOURTH DAY - NOVEMBER 13, 2002**

## **LEGISLATIVE JOURNAL**

### **NINETY-SEVENTH LEGISLATURE THIRD SPECIAL SESSION**

#### **FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, November 13, 2002

#### **PRAYER**

The prayer was offered by Senator Hudkins.

#### **ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senators Bourne, Brown, Coordsen, Dierks, Engel, Robak, Stuhr, Suttle, Thompson, and Wehrbein who were excused.

#### **CORRECTIONS FOR THE JOURNAL**

The Journal for the third day was approved.

#### **NOTICE OF COMMITTEE HEARINGS**

##### **Judiciary**

Room 1113

LB 4	Thursday, November 14, 2002	9:15 a.m.
LB 11	Thursday, November 14, 2002	9:15 a.m.
LB 13	Thursday, November 14, 2002	9:15 a.m.
LB 16	Thursday, November 14, 2002	9:15 a.m.
LB 26	Thursday, November 14, 2002	9:15 a.m.
LB 27	Thursday, November 14, 2002	9:15 a.m.
LB 28	Thursday, November 14, 2002	9:15 a.m.
LB 37	Thursday, November 14, 2002	9:15 a.m.
LB 38	Thursday, November 14, 2002	9:15 a.m.
LB 39	Thursday, November 14, 2002	9:15 a.m.
LB 29	Friday, November 15, 2002	9:15 a.m.
LB 30	Friday, November 15, 2002	9:15 a.m.
LB 31	Friday, November 15, 2002	9:15 a.m.
LB 32	Friday, November 15, 2002	9:15 a.m.
LB 33	Friday, November 15, 2002	9:15 a.m.

LB 34	Friday, November 15, 2002	9:15 a.m.
LB 35	Friday, November 15, 2002	9:15 a.m.
LB 36	Friday, November 15, 2002	9:15 a.m.

(Signed) Kermit A. Brashear, Chairperson

## **STANDING COMMITTEE REPORTS**

### **Revenue**

The Revenue Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Property Tax Administrator  
Catherine D. Lang

VOTE: Aye: Senators Baker, Coordsen, Hartnett, Janssen, Landis, Raikes, and Redfield. Nay: None. Absent: Senator Dierks.

(Signed) George Coordsen, Vice Chairperson

### **Natural Resources**

The Natural Resources Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Nebraska Ethanol Board  
Michael P. Alberts

Environmental Quality Council  
James D. Whitaker

VOTE: Aye: Senators Hlava, Hudkins, Jones, Kremer, and Schrock. Nay: None. Absent: Senators Preister and Stuhr.

(Signed) Ed Schrock, Chairperson

## **REPORT OF REGISTERED LOBBYISTS**

Following is a list of all lobbyists who have registered as of November 13, 2002, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell  
Clerk of the Legislature

Baldwin, Billy

Philip Morris Inc. by its service corporation Philip Morris Management Corp. (Withdrawn 10/15/2002)

Belcher, Barbara N.

Merck/Schering Plough Pharmaceuticals

Bunger, Ken

City of Omaha, Mayor (Withdrawn 08/21/2002)

Omaha Douglas Public Building Commission (Withdrawn 08/26/2002)

Cavanaugh Sr., John

Cavanaugh Law Firm P.C. (Withdrawn 08/26/2002)

Clark, Robin E.

First National Bank of Omaha (Withdrawn 08/29/2002)

Counts, Barry A.

Sprint/Local Telecommunications Division (Withdrawn 10/15/2002)

Cover, Joni R.

Hospitals & Health Systems, Nebraska Association of (Withdrawn 11/07/2002)

Hybl, Michael G.

Great Plains Communications (Withdrawn 08/22/2002)

Trucking Association, Nebraska

Intermill, Nancy L.

Alzheimer's Association, Lincoln/Greater NE (Withdrawn 11/01/2002)

Kissel/Erickson & Sederstrom Associates, L.L.C.

APS Healthcare (Withdrawn 09/09/2002)

Madcharo, Kelley

Medical Association, Nebraska (Withdrawn 09/30/2002)

McClymont, Jeanne A.

Nebraskans Against the Death Penalty

Neidig, Bryce P.

Farm Bureau Federation, Nebraska (Withdrawn 10/29/2002)

Olsen, Keith R.

Farm Bureau Federation, Nebraska

Potter, Cara E.

Grocery Industry Association, Nebraska (Withdrawn 09/11/2002)

Kelley & Lehan, P.C. (Withdrawn 09/09/2002)

Retail Federation, Nebraska (Withdrawn 09/09/2002)

Reid, William S.  
Eli Lilly & Co.

Wiitala, Steve  
Omaha Public Schools (Withdrawn 08/26/2002)

### **REPORTS**

The following report was received by the Legislature:

#### **Arts Council**

Arts and Humanities Cash Fund Report

### **ADJOURNMENT**

At 9:08 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Thursday, November 14, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature

**FIFTH DAY - NOVEMBER 14, 2002**

**LEGISLATIVE JOURNAL**

**NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION**

**FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, November 14, 2002

**PRAYER**

The prayer was offered by Senator Burling.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senators Baker, Brown, Coordsen, Dierks, Kremer, Maxwell, Dw. Pedersen, Preister, Robak, Stuhr, Suttle, Thompson, Tyson, and Vrtiska who were excused.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fourth day was approved.

**NOTICE OF COMMITTEE HEARINGS**

**Nebraska Retirement Systems**

Room 1525

Monday, November 18, 2002

12:30 p.m.

Carol Kontor - State Investment Officer

Earl Scudder - Nebraska Investment Council

Gail Werner-Robertson - Nebraska Investment Council

(Signed) Phil Erdman, Vice Chairperson

**General Affairs**

Room 1510

Tuesday, November 19, 2002

8:15 a.m.

George M. Morrissey - State Electrical Board

(Signed) Ray Janssen, Chairperson

**ADJOURNMENT**

At 9:10 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, November 15, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature



**SIXTH DAY - NOVEMBER 15, 2002**

**LEGISLATIVE JOURNAL**

**NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION**

**SIXTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Friday, November 15, 2002

**PRAYER**

The prayer was offered by Senator Aguilar.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Bourne, Byars, Dierks, Jones, Maxwell, Preister, Robak, Stuhr, Suttle, Vrtiska, and Wehrbein who were excused; and Senator Beutler who was excused until he arrives.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifth day was approved.

**RESOLUTIONS**

**LEGISLATIVE RESOLUTION 6.** Introduced by Johnson, 37.

WHEREAS, Steven J. Hansen of Kearney earned the Boy Scouts' highest honor and rank of Eagle Scout and will be awarded the Eagle Scout Badge on Sunday, November 24, 2002; and

WHEREAS, Steven is being recognized by the Boy Scouts for his years of hard work, service to community, and commitment to his Scouting duties; and

WHEREAS, fewer than four percent of all young men who join the Boy Scouts attain the rank of Eagle Scout; and

WHEREAS, Steven J. Hansen has achieved great success as an exemplary member of the Scouting program and has represented his troop and community with excellence.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature congratulates Steven J. Hansen on his achievement

of the elite rank of Eagle Scout in the Boy Scouts and recognizes his outstanding community service efforts in Kearney.

2. That a copy of this resolution be sent to Steven J. Hansen and his family.

Laid over.

**LEGISLATIVE RESOLUTION 7.** Introduced by Burling, 33.

WHEREAS, skillful, enthusiastic, and innovative teachers improve the lives of countless students by encouraging curiosity and understanding and by contributing to the development of mind and spirit; and

WHEREAS, the U.S. Professors of the Year program, presented by The Carnegie Foundation for the Advancement of Teaching and directed by the Council for Advancement and Support of Education, is the nation's most highly respected program to recognize outstanding faculty; and

WHEREAS, the Nebraska Professor of the Year represents the thousands of dedicated university and college instructors throughout Nebraska who serve their students, their communities, and their state with dedication and talent; and

WHEREAS, Nebraska has long supported excellence in undergraduate teaching; and

WHEREAS, the quality of life and the scope of opportunity for many future citizens of Nebraska will be determined by the quality of teaching in the college classroom.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Unicameral of Nebraska recognizes and commends Dr. James Wiest, professor of sociology at Hastings College, upon being named the 2002 Professor of the Year.

2. That a copy of this resolution be sent to Dr. James Wiest.

Laid over.

**LEGISLATIVE RESOLUTION 8.** Introduced by Aguilar, 35.

WHEREAS, Andrew Dodendorf, Troop 120, of Grand Island, Nebraska, has completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

WHEREAS, to earn the rank of Eagle Scout, the highest advancement rank in Scouting, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. Although many options are available to demonstrate proficiency in these areas, a number of specific skills are required to advance through the ranks: Tenderfoot, Second Class, First Class, Star, Life, and finally Eagle. Throughout his Scouting experience, Andrew Dodendorf has learned, been tested and reviewed on, and been recognized for various Scouting skills; and

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required

to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council; and

WHEREAS, only two percent of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, on Sunday, November 17, 2002, Andrew Dodendorf will receive the rank of Eagle Scout, thereby, through his hard work and perseverance, joining other high achievers who are Eagle Scouts such as astronauts, political and industry leaders, artists, scientists, and athletes.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature congratulates Andrew Dodendorf on achieving the rank of Eagle Scout.
2. That a copy of this resolution be sent to Andrew Dodendorf.

Laid over.

### **REPORT OF REGISTERED LOBBYISTS**

Following is a list of all lobbyists who have registered as of November 15, 2002, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell  
Clerk of the Legislature

Clark, Douglas R.  
Metropolitan Utilities District of Omaha

Otto, James A.  
Retail Federation, Nebraska

### **REPORTS**

The following reports were received by the Legislature:

**Liquor Control Commission**  
Keg Registration Act Report

**Roads, Department of**  
2001 Traffic Crash Facts Annual Report  
Board of Public Roads Classifications and Standards Minutes for  
September 2002

### **MOTIONS - Approve Appointments**

Senator Coordsen moved the adoption of the Revenue Committee report for the confirmation of the following appointment found on page 36:

Property Tax Administrator  
Catherine D. Lang

Voting in the affirmative, 28:

Aguilar	Engel	Jensen	Pederson, D.	Schrock
Baker	Foley	Johnson	Price	Smith
Brown	Hartnett	Kremer	Quandahl	Thompson
Coordsen	Hlava	Kruse	Raikes	Tyson
Cudaback	Hudkins	Landis	Redfield	
Cunningham	Janssen	McDonald	Schimek	

Voting in the negative, 1:

Erdman

Present and not voting, 7:

Brashear	Burling	Connealy	Synowiecki
Bromm	Chambers	Pedersen, Dw.	

Excused and not voting, 12:

Beutler	Dierks	Preister	Suttle
Bourne	Jones	Robak	Vrtiska
Byars	Maxwell	Stuhr	Wehrbein

The appointment was confirmed with 28 ayes, 1 nay, 7 present and not voting, and 12 excused and not voting.

Senator Schrock moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment found on page 36:

Nebraska Ethanol Board  
Michael P. Alberts

Voting in the affirmative, 29:

Aguilar	Cudaback	Hudkins	Landis	Redfield
Baker	Cunningham	Janssen	McDonald	Schimek
Brown	Engel	Jensen	Pederson, D.	Schrock
Burling	Erdman	Johnson	Price	Smith
Connealy	Foley	Kremer	Quandahl	Tyson
Coordsen	Hlava	Kruse	Raikes	

Voting in the negative, 0.

Present and not voting, 8:

Beutler	Bromm	Hartnett	Synowiecki
Brashear	Chambers	Pedersen, Dw.	Thompson

Excused and not voting, 11:

Bourne	Jones	Robak	Vrtiska
Byars	Maxwell	Stuhr	Wehrbein
Dierks	Preister	Suttle	

The appointment was confirmed with 29 ayes, 0 nays, 8 present and not voting, and 11 excused and not voting.

### **UNANIMOUS CONSENT - Add Cointroducer**

Senator Coordsen asked unanimous consent to have his name added as cointroducer to LB 3. No objections. So ordered.

### **GENERAL FILE**

**LEGISLATIVE BILL 3.** Title read. Considered.

Advanced to E & R for review with 31 ayes, 0 nays, 6 present and not voting, and 11 excused and not voting.

### **MOTION - Approve Appointment**

Senator Schrock moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment found on page 36:

Environmental Quality Council  
James D. Whitaker

Voting in the affirmative, 28:

Aguilar	Cunningham	Hudkins	Landis	Schimek
Beutler	Engel	Janssen	McDonald	Smith
Brown	Erdman	Jensen	Price	Thompson
Burling	Foley	Johnson	Quandahl	Tyson
Coordsen	Hartnett	Kremer	Raikes	
Cudaback	Hlava	Kruse	Redfield	

Voting in the negative, 0.

Present and not voting, 9:

Baker	Bromm	Connealy	Pederson, D.	Synowiecki
Brashear	Chambers	Pedersen, Dw.	Schrock	

Excused and not voting, 11:

Bourne	Jones	Robak	Vrtiska
Byars	Maxwell	Stuhr	Wehrbein
Dierks	Preister	Suttle	

The appointment was confirmed with 28 ayes, 0 nays, 9 present and not voting, and 11 excused and not voting.

### **VISITORS**

Visitor to the Chamber was Milt Rodgers from Chappell.

### **ADJOURNMENT**

At 9:24 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Monday, November 18, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature

**SEVENTH DAY - NOVEMBER 18, 2002****LEGISLATIVE JOURNAL****NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION****SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Monday, November 18, 2002

**PRAYER**

The prayer was offered by Senator Vrtiska.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Bromm presiding.

The roll was called and all members were present except Senator Dierks who was excused; and Senators Landis, Price, Robak, and Synowiecki who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the sixth day was approved.

**MESSAGE FROM THE GOVERNOR**

November 15, 2002

President, Speaker Bromm  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

I hereby appoint Raymond F. Mossey to the vacancy in the 3<sup>rd</sup> Legislative District created by the resignation of Senator Jon Bruning. This appointment will take effect immediately.

Sincerely,  
(Signed) Mike Johanns  
Governor

say/

Greetings To All Who Shall See These Presents Know Ye, that I, Mike Johanns, on behalf of the State of Nebraska and as Governor, do hereby appoint Raymond F. Mossey as Senator for Legislative District #3.

This appointment shall take effect on November 15, 2002, and continue until January 7, 2004, provided you shall satisfactorily perform all the duties imposed by law.

(Signed) John A. Gale  
Secretary of State

[illegible]

"I, Raymond F. Mossey, III, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Nebraska, and will faithfully discharge the duties of Member of the Legislature, District 3 according to the best of my ability, and that at the election at which I was chosen to fill said office, I have not improperly influenced in any way the vote of any elector, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office, for any official act or influence (for any vote may give or withhold on any bill, resolution, or appropriation)."\*

Subscribed in my presence and sworn to before me this 15<sup>th</sup> day of November, 2002.

(SEAL)

\*Constitution of the State of Nebraska, Article XV, Section One. For Executive, Judicial Officers and Members of the Legislature



## STANDING COMMITTEE REPORTS

### Judiciary

**LEGISLATIVE BILL 1.** Placed on General File as amended.

(Standing Committee amendment, AM9013, is printed separately and available in the Bill Room, Room 1104.)

**LEGISLATIVE BILL 4.** Indefinitely postponed.

**LEGISLATIVE BILL 19.** Indefinitely postponed.

**LEGISLATIVE BILL 37.** Indefinitely postponed.

**LEGISLATIVE BILL 38.** Indefinitely postponed.

**LEGISLATIVE BILL 39.** Indefinitely postponed.

(Signed) Kermit A. Brashear, Chairperson

### UNANIMOUS CONSENT – Add Cointroducer

Senator Brashear asked unanimous consent to have his name added as cointroducer to LB 1. No objections. So ordered.

## SENATOR CUDABACK PRESIDING

### GENERAL FILE

**LEGISLATIVE BILL 1.** Title read. Considered.

The Standing Committee amendment, AM9013, printed separately and referred to in this day's Journal, was considered.

Senator Brashear offered the following amendment to the Standing Committee amendment:

AM9028

(Amendments to Standing Committee amendments, AM9013)

- 1 1. On page 2, lines 9 and 10; page 7, lines 8 and 9;
- 2 page 12, line 3; page 14, line 24; page 15, lines 4 and 6; page 16,
- 3 lines 17, 19, and 22; and page 17, line 4, strike "pursuant to" and
- 4 insert "as provided in".
- 5 2. On page 4, line 12, after "alleges" insert "one or
- 6 more"; in lines 12 and 13 strike "if any"; and strike beginning
- 7 with "prior" in line 22 through line 24 and insert "until after the
- 8 verdict is rendered in the trial of guilt".
- 9 3. On page 6, line 4, strike ", unless" and insert "
- 10 If"; in line 5 after "28-303" insert "and in which the death
- 11 penalty is sought"; in lines 5 and 6 strike "in which case" and
- 12 insert an underscored comma; in lines 6 and 7 strike "through the
- 13 jury determination of the alleged aggravating circumstances"; and
- 14 in line 22 reinstate both stricken commas.
- 15 4. On page 12, line 23, strike the first "the"; in line
- 16 24 strike the comma; in line 25 after "to" insert "a"; and in line

17 26 after "and" insert "either".  
18 5. On page 13, line 3, strike "provided in this  
19 subdivision" and insert "required by subdivision (2)(b) of this  
20 section"; in line 9 strike the comma; in line 10 after  
21 "circumstances" insert ", such determination"; in line 20 strike  
22 "sit" and insert "serve"; in line 21 after "29-2004" insert "but  
23 shall not participate in the jury's deliberations under this  
1 subsection"; in line 22 after the first "jury" insert "serving";  
2 and in line 23 strike "that found the defendant guilty of murder in  
3 the first degree" and insert "which determined the defendant's  
4 guilt".  
5 6. On page 14, line 3, after "to" insert "the"; in line  
6 19 after "(g)" insert "Upon rendering its verdict as to the  
7 determination of the aggravating circumstances, the jury shall be  
8 discharged.  
9 (h)"; and strike lines 25 and 26 and show the old matter  
10 as stricken.  
11 7. On page 15, line 11, strike "having been"; and in  
12 line 21 after "district" insert "court".  
13 8. On page 15, line 27; and page 17, line 6, after  
14 "when" insert "the right to".  
15 9. On page 16, line 2, after "waived" insert ", the  
16 panel shall, as soon as practicable after receipt of the written  
17 report resulting from the presentence investigation ordered as  
18 provided in section 29-2261, hold a hearing. At such hearing"; in  
19 line 5 strike "and" and insert an underscored comma; in line 6  
20 strike ". Any such evidence", show as stricken, and insert ", and  
21 to sentence excessiveness or disproportionality. Each aggravating  
22 circumstance shall be proved beyond a reasonable doubt. Any  
23 evidence at the sentencing determination proceeding"; in line 11  
24 strike "sentence", show as stricken, and insert "sentencing"; in  
25 line 24 strike "to the panel"; and in line 27 after "29-2523"  
26 insert an underscored comma.  
27 10. On page 17, line 2, after the period insert "Any  
1 such evidence which the presiding judge deems to have probative  
2 value may be received. The state and the defendant and his or her  
3 counsel shall be permitted to present argument for or against  
4 sentence of death. The presiding judge shall set forth the general  
5 order of procedure at the outset of the sentencing determination  
6 proceeding"; in line 7 after the first "determination" insert "of  
7 the alleged aggravating circumstances"; in line 9 after "court"  
8 insert an underscored comma; and strike beginning with "After" in  
9 line 13 through line 15, show the old matter as stricken, and  
10 insert "The panel of judges for the sentencing determination  
11 proceeding".  
12 11. On page 18, line 14, strike "29-2520 to 29-2522",  
13 show the old matter as stricken, and insert "29-2519 to 29-2524".  
14 12. On page 21, line 21, strike "29-2261"; and in line  
15 23 after the second comma insert "29-2261".

The Brashear amendment was adopted with 34 ayes, 0 nays, 12 present and not voting, and 3 excused and not voting.

Senator Brashear offered the following amendment to the Standing Committee amendment:

AM9029

- 1 1. In the Standing Committee amendments, AM9013, on page
- 2 16, line 15, after the period insert "Each finding of fact with
- 3 respect to each alleged aggravating circumstance shall be
- 4 unanimous. If the panel is unable to reach a unanimous finding of
- 5 fact with respect to an aggravating circumstance, such aggravating
- 6 circumstance shall not be weighed in the sentencing determination
- 7 proceeding.".
- 8 2. In AM9028, on page 2, line 21, after the period
- 9 insert "The Nebraska Evidence Rules shall apply to evidence
- 10 relating to aggravating circumstances.".

The Brashear amendment was adopted with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

Senators Beutler, Connealy, and Hartnett offered the following amendment to the Standing Committee amendment:

AM9027

(Amendments to Standing Committee amendments, AM9013)

- 1 1. Insert the following new sections:
- 2 "Section 1. Section 28-105, Revised Statutes Supplement,
- 3 2002, is amended to read:
- 4 28-105. (1) For purposes of the Nebraska Criminal Code
- 5 and any statute passed by the Legislature after the date of passage
- 6 of the code, felonies are divided into nine classes which are
- 7 distinguished from one another by the following penalties which are
- 8 authorized upon conviction:
- 9 Class I felony ..... Death
- 10 ~~Class IA felony .... Life imprisonment~~
- 11 Class IA felony .... Life imprisonment without parole
- 12 Class IB felony .... Maximum -- life imprisonment
- 13 Minimum -- twenty years imprisonment
- 14 Class IC felony .... Maximum -- fifty years imprisonment
- 15 Mandatory minimum -- five years imprisonment
- 16 Class ID felony .... Maximum -- fifty years imprisonment
- 17 Mandatory minimum -- three years
- 18 imprisonment
- 19 Class II felony .... Maximum -- fifty years imprisonment
- 20 Minimum -- one year imprisonment
- 21 Class III felony .... Maximum -- twenty years imprisonment, or
- 22 twenty-five thousand dollars fine, or both
- 23 Minimum -- one year imprisonment
- 1 Class IIIA felony ... Maximum -- five years imprisonment, or
- 2 ten thousand dollars fine, or both

3 Minimum -- none

4 Class IV felony ..... Maximum -- five years imprisonment, or ten  
5 thousand dollars fine, or both

6 Minimum -- none

7 (2) All sentences of imprisonment for Class IA, IB, IC,  
8 ID, II, and III felonies and sentences of one year or more for  
9 Class IIIA and IV felonies shall be served in institutions under  
10 the jurisdiction of the Department of Correctional Services.  
11 Sentences of less than one year shall be served in the county jail  
12 except as provided in this subsection. If the department certifies  
13 that it has programs and facilities available for persons sentenced  
14 to terms of less than one year, the court may order that any  
15 sentence of six months or more be served in any institution under  
16 the jurisdiction of the department. Any such certification shall  
17 be given by the department to the State Court Administrator, who  
18 shall forward copies thereof to each judge having jurisdiction to  
19 sentence in felony cases.

20 (3) Nothing in this section shall limit the authority  
21 granted in sections 29-2221 and 29-2222 to increase sentences for  
22 habitual criminals.

23 (4) A person convicted of a felony for which a mandatory  
24 minimum sentence is prescribed shall not be eligible for probation.

25 Sec. 17. Section 83-1,105.01, Reissue Revised Statutes  
26 of Nebraska, is amended to read:

27 83-1,105.01. Except when a term of life imprisonment  
1 without parole is required by law, in imposing an indeterminate  
2 sentence upon an offender the court shall:

3 (1) Fix the minimum and maximum limits of the sentence to  
4 be served within the limits provided by law for any class of felony  
5 other than a Class IV felony, except that when a maximum limit of  
6 life is imposed by the court for a Class IB felony, the minimum  
7 limit may be any term of years not less than the statutory  
8 mandatory minimum. If the criminal offense is a Class IV felony,  
9 the court shall fix the minimum and maximum limits of the sentence,  
10 but the minimum limit fixed by the court shall not be less than the  
11 minimum provided by law nor more than one-third of the maximum term  
12 and the maximum limit shall not be greater than the maximum  
13 provided by law;

14 (2) Impose a definite term of years, in which event the  
15 maximum term of the sentence shall be the term imposed by the court  
16 and the minimum term shall be the minimum sentence provided by law;  
17 or

18 (3)(a) When the court is of the opinion that imprisonment  
19 may be appropriate but desires more detailed information as a basis  
20 for determining the sentence to be imposed than has been provided  
21 by the presentence report required by section 29-2261, the court  
22 shall commit an offender to the Department of Correctional Services  
23 for a period not exceeding ninety days. The department shall  
24 conduct a complete study of the offender during that time,

25 inquiring into such matters as his or her previous delinquency or  
26 criminal experience, social background, capabilities, and mental,  
27 emotional, and physical health and the rehabilitative resources or  
1 programs which may be available to suit his or her needs. By the  
2 expiration of the period of commitment or by the expiration of such  
3 additional time as the court shall grant, not exceeding a further  
4 period of ninety days, the offender shall be returned to the court  
5 for sentencing and the court shall be provided with a written  
6 report of the results of the study, including whatever  
7 recommendations the department believes will be helpful to a proper  
8 resolution of the case. After receiving the report and the  
9 recommendations, the court shall proceed to sentence the offender  
10 in accordance with any applicable provision of law. The term of  
11 the sentence shall run from the date of original commitment under  
12 this subdivision.

13 (b) In order to encourage the use of this procedure in  
14 appropriate cases, all costs incurred during the period the  
15 offender is held in a state institution under this subdivision  
16 shall be the responsibility of the state and the county shall be  
17 liable only for the cost of delivering the offender to the  
18 institution and the cost of returning him or her to the appropriate  
19 court for sentencing or such other disposition as the court may  
20 then deem appropriate."

21 2. On page 12, line 18; and page 14, line 20; after  
22 "imprisonment" insert "without parole".

23 3. On page 14, strike beginning with "The" in line 5  
24 through line 9 and insert

25 "After the receipt of evidence and argument, the court  
26 shall instruct the jury on the following:

27 (i) The definition of the aggravating circumstance or  
1 aggravating circumstances alleged in the information;

2 (ii) The state's burden to prove beyond a reasonable  
3 doubt the existence of each aggravating circumstance alleged in the  
4 information;

5 (iii) The jury's finding that one or more aggravating  
6 circumstances are found to exist may provide the basis for the  
7 imposition of a death sentence by the court, if the court  
8 determines on the basis of all the evidence that the aggravating  
9 facts found by the jury justify imposition of a sentence of death,  
10 that sufficient mitigating circumstances which approach or exceed  
11 the weight given to the aggravating circumstances do not exist, and  
12 that the death sentence is not excessive or disproportionate to the  
13 penalty imposed in similar cases, considering both the crime and  
14 the defendant;

15 (iv) The jury's finding that no aggravating circumstance  
16 or circumstances exist will limit the discretion of the court and  
17 require the court to impose a sentence of life imprisonment without  
18 parole;

19 (v) That the jury finding on the existence of an

20 aggravating circumstance is required to be unanimous; and  
 21 (vi) That, in the event that the jury cannot reach an  
 22 unanimous decision on the existence of a particular aggravating  
 23 circumstance after a reasonable amount of deliberation, the jury  
 24 may inform the court of the deadlock on that aggravating  
 25 circumstance."; in line 11 after "return" insert ", except as  
 26 otherwise provided in subdivision (4)(g) of this section,"; and in  
 27 line 19 after "(g)" insert "If the jury informs the sentencing  
 1 panel of a deadlock and the sentencing panel determines that  
 2 further deliberations would not result in a unanimous decision on  
 3 that aggravating circumstance, the court shall enter a finding that  
 4 the particular aggravating circumstance does not exist.  
 5 (h)".  
 6 4. On page 17, line 18; and page 20, lines 18 and 20,  
 7 after "imprisonment" insert "without parole".  
 8 5. Renumber the remaining sections and correct internal  
 9 references and repealer accordingly.

Senator Brashear requested a division of the question on the Beutler et al. amendment.

The Chair sustained the division of the question.

The first Beutler, Connealy, and Hartnett amendment to the Standing Committee amendment is as follows:

FA1126

(Amendments to Standing Committee amendments, AM9013)

1 1. Insert the following new sections:  
 2 "Section 1. Section 28-105, Revised Statutes Supplement,  
 3 2002, is amended to read:  
 4 28-105. (1) For purposes of the Nebraska Criminal Code  
 5 and any statute passed by the Legislature after the date of passage  
 6 of the code, felonies are divided into nine classes which are  
 7 distinguished from one another by the following penalties which are  
 8 authorized upon conviction:  
 9 Class I felony ..... Death  
 10 ~~Class IA felony ..... Life imprisonment~~  
 11 Class IA felony ..... Life imprisonment without parole  
 12 Class IB felony ..... Maximum -- life imprisonment  
 13 Minimum -- twenty years imprisonment  
 14 Class IC felony ..... Maximum -- fifty years imprisonment  
 15 Mandatory minimum -- five years imprisonment  
 16 Class ID felony ..... Maximum -- fifty years imprisonment  
 17 Mandatory minimum -- three years  
 18 imprisonment  
 19 Class II felony ..... Maximum -- fifty years imprisonment  
 20 Minimum -- one year imprisonment  
 21 Class III felony .... Maximum -- twenty years imprisonment, or  
 22 twenty-five thousand dollars fine, or both

23 Minimum -- one year imprisonment

1 Class IIIA felony ... Maximum -- five years imprisonment, or

2 ten thousand dollars fine, or both

3 Minimum -- none

4 Class IV felony ..... Maximum -- five years imprisonment, or ten

5 thousand dollars fine, or both

6 Minimum -- none

7 (2) All sentences of imprisonment for Class IA, IB, IC,

8 ID, II, and III felonies and sentences of one year or more for

9 Class IIIA and IV felonies shall be served in institutions under

10 the jurisdiction of the Department of Correctional Services.

11 Sentences of less than one year shall be served in the county jail

12 except as provided in this subsection. If the department certifies

13 that it has programs and facilities available for persons sentenced

14 to terms of less than one year, the court may order that any

15 sentence of six months or more be served in any institution under

16 the jurisdiction of the department. Any such certification shall

17 be given by the department to the State Court Administrator, who

18 shall forward copies thereof to each judge having jurisdiction to

19 sentence in felony cases.

20 (3) Nothing in this section shall limit the authority

21 granted in sections 29-2221 and 29-2222 to increase sentences for

22 habitual criminals.

23 (4) A person convicted of a felony for which a mandatory

24 minimum sentence is prescribed shall not be eligible for probation.

25 Sec. 17. Section 83-1,105.01, Reissue Revised Statutes

26 of Nebraska, is amended to read:

27 83-1,105.01. Except when a term of life imprisonment

1 without parole is required by law, in imposing an indeterminate

2 sentence upon an offender the court shall:

3 (1) Fix the minimum and maximum limits of the sentence to

4 be served within the limits provided by law for any class of felony

5 other than a Class IV felony, except that when a maximum limit of

6 life is imposed by the court for a Class IB felony, the minimum

7 limit may be any term of years not less than the statutory

8 mandatory minimum. If the criminal offense is a Class IV felony,

9 the court shall fix the minimum and maximum limits of the sentence,

10 but the minimum limit fixed by the court shall not be less than the

11 minimum provided by law nor more than one-third of the maximum term

12 and the maximum limit shall not be greater than the maximum

13 provided by law;

14 (2) Impose a definite term of years, in which event the

15 maximum term of the sentence shall be the term imposed by the court

16 and the minimum term shall be the minimum sentence provided by law;

17 or

18 (3)(a) When the court is of the opinion that imprisonment

19 may be appropriate but desires more detailed information as a basis

20 for determining the sentence to be imposed than has been provided

21 by the presentence report required by section 29-2261, the court

22 shall commit an offender to the Department of Correctional Services  
 23 for a period not exceeding ninety days. The department shall  
 24 conduct a complete study of the offender during that time,  
 25 inquiring into such matters as his or her previous delinquency or  
 26 criminal experience, social background, capabilities, and mental,  
 27 emotional, and physical health and the rehabilitative resources or  
 1 programs which may be available to suit his or her needs. By the  
 2 expiration of the period of commitment or by the expiration of such  
 3 additional time as the court shall grant, not exceeding a further  
 4 period of ninety days, the offender shall be returned to the court  
 5 for sentencing and the court shall be provided with a written  
 6 report of the results of the study, including whatever  
 7 recommendations the department believes will be helpful to a proper  
 8 resolution of the case. After receiving the report and the  
 9 recommendations, the court shall proceed to sentence the offender  
 10 in accordance with any applicable provision of law. The term of  
 11 the sentence shall run from the date of original commitment under  
 12 this subdivision.

13 (b) In order to encourage the use of this procedure in  
 14 appropriate cases, all costs incurred during the period the  
 15 offender is held in a state institution under this subdivision  
 16 shall be the responsibility of the state and the county shall be  
 17 liable only for the cost of delivering the offender to the  
 18 institution and the cost of returning him or her to the appropriate  
 19 court for sentencing or such other disposition as the court may  
 20 then deem appropriate."

21 2. On page 12, line 18; and page 14, line 20; after  
 22 "imprisonment" insert "without parole".

6 4. On page 17, line 18; and page 20, lines 18 and 20,  
 7 after "imprisonment" insert "without parole".

8 5. Renumber the remaining sections and correct internal  
 9 references and repealer accordingly.

Senators Price and Wehrbein asked unanimous consent to be excused until  
 they return. No objections. So ordered.

The first Beutler et al. amendment was adopted with 39 ayes, 0 nays, 7  
 present and not voting, and 3 excused and not voting.

The second Beutler, Connealy, and Hartnett amendment to the Standing  
 Committee amendment is as follows:  
 FA1125

(Amendments to Standing Committee amendments, AM9013)

23 3. On page 14, strike beginning with "The" in line 5  
 24 through line 9 and insert  
 25 "After the receipt of evidence and argument, the court  
 26 shall instruct the jury on the following:  
 27 (i) The definition of the aggravating circumstance or  
 1 aggravating circumstances alleged in the information;



- 2 (ii) The state's burden to prove beyond a reasonable  
 3 doubt the existence of each aggravating circumstance alleged in the  
 4 information;
- 5 (iii) The jury's finding that one or more aggravating  
 6 circumstances are found to exist may provide the basis for the  
 7 imposition of a death sentence by the court, if the court  
 8 determines on the basis of all the evidence that the aggravating  
 9 facts found by the jury justify imposition of a sentence of death,  
 10 that sufficient mitigating circumstances which approach or exceed  
 11 the weight given to the aggravating circumstances do not exist, and  
 12 that the death sentence is not excessive or disproportionate to the  
 13 penalty imposed in similar cases, considering both the crime and  
 14 the defendant;
- 15 (iv) The jury's finding that no aggravating circumstance  
 16 or circumstances exist will limit the discretion of the court and  
 17 require the court to impose a sentence of life imprisonment without  
 18 parole;
- 19 (v) That the jury finding on the existence of an  
 20 aggravating circumstance is required to be unanimous; and
- 21 (vi) That, in the event that the jury cannot reach an  
 22 unanimous decision on the existence of a particular aggravating  
 23 circumstance after a reasonable amount of deliberation, the jury  
 24 may inform the court of the deadlock on that aggravating  
 25 circumstance."; in line 11 after "return" insert ", except as  
 26 otherwise provided in subdivision (4)(g) of this section,"; and in  
 27 line 19 after "(g)" insert "If the jury informs the sentencing  
 1 panel of a deadlock and the sentencing panel determines that  
 2 further deliberations would not result in a unanimous decision on  
 3 that aggravating circumstance, the court shall enter a finding that  
 4 the particular aggravating circumstance does not exist.  
 5 (h)".

Pending.

### SELECT COMMITTEE REPORT Enrollment and Review

**LEGISLATIVE BILL 3.** Placed on Select File.

(Signed) Philip Erdman, Chairperson

### RESOLUTION

**LEGISLATIVE RESOLUTION 9.** Introduced by Thompson, 14.

WHEREAS, the Papillion-La Vista High School Monarchs volleyball team entered the 2002 season as the two-time defending Class A Nebraska state champion; and

WHEREAS, on November 16, 2002, the Papillion-La Vista High School

Monarchs volleyball team won its third consecutive Class A state championship after reaching the championship game for the eighth time; and

WHEREAS, Head Coach Gwen Egbert and the members of the Papillion-La Vista High School Monarchs volleyball team achieved this exceptional accomplishment through their hard work, determination, and team play.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature recognizes and congratulates the coaches and members of the 2002 Papillion-La Vista High School Monarchs volleyball team for their outstanding accomplishment.

2. That a copy of this resolution be sent to the Papillion-La Vista High School Monarchs volleyball team and Head Coach Gwen Egbert.

Laid over.

### **RECESS**

At 11:58 a.m., on a motion by Speaker Bromm, the Legislature recessed until 1:30 p.m.

### **AFTER RECESS**

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

### **ROLL CALL**

The roll was called and all members were present except Senator Dierks who was excused; and Senators Bromm, Landis, Robak, Stuhr, Suttle, and Wehrbein who were excused until they arrive.

### **GENERAL FILE**

**LEGISLATIVE BILL 1.** The second Beutler et al. pending amendment, FA1125, found in this day's Journal, to the Standing Committee amendment, was renewed.

The second Beutler et al. amendment lost with 11 ayes, 26 nays, 10 present and not voting, and 2 excused and not voting.

Senator Chambers offered the following motion:  
Recommit LB 1 to the Judiciary Committee.

Senator Chambers withdrew his motion.

Senator Chambers offered the following amendment to the Standing Committee amendment:  
FA1127

Amend AM9013  
Strike section 1.

Senator Landis asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1128  
Amend AM9013  
Strike section 2.

Senator Janssen asked unanimous consent to be excused until he returns. No objections. So ordered.

### **SPEAKER BROMM PRESIDING**

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1129  
Amend AM9013  
Strike section 3.

Senator Bourne asked unanimous consent to be excused. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1130  
Amend AM9013  
Strike section 4.

Senator Suttle asked unanimous consent to be excused. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1131  
Amend AM9013  
Strike section 5.

Senator Hartnett asked unanimous consent to be excused. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1132

Amend AM9013

Strike section 6.

Senators Thompson and Dw. Pedersen asked unanimous consent to be excused. No objections. So ordered.

Senator Chambers moved for a call of the house. The motion prevailed with 19 ayes, 0 nays, and 30 not voting.

The Chambers amendment lost with 1 aye, 27 nays, 14 present and not voting, and 7 excused and not voting.

Pending.

## RESOLUTION

### **LEGISLATIVE RESOLUTION 10.** Introduced by Burling, 33.

WHEREAS, Jeffrey Deal of Troop 192, Hastings, Nebraska, has completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

WHEREAS, Jeffrey Deal is a scholastically recognized high school senior who has been consistently listed on the honor roll throughout his years of education. Jeffrey is also a gifted musician and the recipient of the Scholarship, Citizenship, and Service Award; and

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council; and

WHEREAS, only two percent of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, on Sunday, December 1, 2002, Jeffrey Deal will receive the rank of Eagle Scout, thereby, through his hard work and perseverance, joining other high achievers who are Eagle Scouts such as astronauts, political and industry leaders, artists, scientists, and athletes.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature congratulates Jeffrey Deal on achieving the rank of Eagle Scout.

2. That a copy of this resolution be sent to Jeffrey Deal.

Laid over.

**ANNOUNCEMENT**

Senator Brashear announced the Judiciary Committee will hold an executive session Tuesday, November 19, 2002, at 8:45 a.m., in Room 2022.

**RESOLUTIONS**

Pursuant to Rule 4, Sec. 5(b), LRs 1 and 2 were adopted.

**SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 1 and 2.

**ADJOURNMENT**

At 5:29 p.m., on a motion by Senator Brashear, the Legislature adjourned until 9:00 a.m., Tuesday, November 19, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature



**EIGHTH DAY - NOVEMBER 19, 2002****LEGISLATIVE JOURNAL****NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION****EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, November 19, 2002

**PRAYER**

The prayer was offered by Senator Johnson.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Bromm presiding.

The roll was called and all members were present except Senators Dierks, Robak, and Schimek who were excused; and Senators Landis, Price, and Wehrbein who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the seventh day was approved.

**STANDING COMMITTEE REPORT  
Judiciary**

**LEGISLATIVE BILL 2.** Indefinitely postponed.

(Signed) Kermit A. Brashear, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 1.** Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1133

Amend AM9013

Strike section 7.

Senators Beutler and Cunningham asked unanimous consent to be excused until they return. No objections. So ordered.

Senator Chambers withdrew his amendment.

**ANNOUNCEMENT**

The Chair announced today is Senator Jones' birthday.

**GENERAL FILE**

**LEGISLATIVE BILL 1.** Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1134

Amend AM9013

Strike section 8.

**SENATOR CUDABACK PRESIDING**

Senator Tyson asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1135

Amend AM9013

Strike section 9.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1136

Amend AM9013

Strike section 10.

**SPEAKER BROMM PRESIDING**

Senators Erdman, Foley, Jensen, and Jones asked unanimous consent to be excused until they return. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1137

Amend AM9013

Strike section 11.

Senator Byars asked unanimous consent to be excused until he returns. No objections. So ordered.



Pending.

### **ANNOUNCEMENT**

Senator Dw. Pedersen announced the Committee on Committees will meet today, at 1:15 p.m., in Room 2022.

### **STANDING COMMITTEE REPORT** **General Affairs**

The General Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

State Electrical Board  
George M. Morrissey

VOTE: Aye: Senators Burling, Cunningham, Erdman, Janssen, Johnson, McDonald, and Redfield. Nay: None. Absent: Senator Synowiecki.

(Signed) Ray Janssen, Chairperson

### **PROPOSED RULES CHANGE**

Senator Baker offered the following proposed rules change:  
Make the following membership changes by district to the Committee on Committees caucuses:

Legislative District 18 from District 3 to District 2

Legislative Districts 16, 23 and 32 from District 3 to District 1

Legislative Districts 22, 33, and 35 from District 1 to District 3

Referred to the Rules Committee.

### **AMENDMENT - Print in Journal**

Senator Coordsen filed the following amendment to LB 3:  
AM9034

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 "Section 1. There is hereby appropriated \$54,906 from
- 4 the General Fund for FY2002-03 to the Legislative Council, for
- 5 Program 122, for expenses incurred during the Ninety-seventh
- 6 Legislature, Third Special Session, 2002.
- 7 Sec. 2. There is hereby appropriated \$44,337 from the
- 8 General Fund for FY2002-03 to the Legislative Council, for Program
- 9 123, for expenses incurred during the Ninety-seventh Legislature,
- 10 Third Special Session, 2002.
- 11 Total expenditures for permanent and temporary salaries
- 12 and per diems from funds appropriated in this section shall not

13 exceed \$10,344 for FY2002-03.

14 Sec. 3. There is hereby appropriated \$3,517 from the  
15 General Fund for FY2002-03 to the Legislative Council, for Program  
16 127, for expenses incurred during the Ninety-seventh Legislature,  
17 Third Special Session, 2002.

18 Total expenditures for permanent and temporary salaries  
19 and per diems from funds appropriated in this section shall not  
20 exceed \$2,200 for FY2002-03.

21 Sec. 4. Since an emergency exists, this act takes effect  
22 when passed and approved according to law."

### **RECESS**

At 11:59 a.m., on a motion by Senator Brashear, the Legislature recessed until 1:30 p.m.

### **AFTER RECESS**

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

### **ROLL CALL**

The roll was called and all members were present except Senators Coordsen, Dierks, Robak, and Schimek who were excused; and Senators Baker, Beutler, Brown, Byars, Foley, Janssen, Landis, D. Pederson, Suttle, and Thompson who were excused until they arrive.

### **NOTICE OF COMMITTEE HEARING**

#### **Rules**

Room 1510

Wednesday, November 20, 2002

12:30 p.m.

Senator Baker's proposed rules change

Legislative Journal page 65

(Signed) Carol Hudkins, Chairperson

### **GENERAL FILE**

**LEGISLATIVE BILL 1.** Senator Chambers renewed his pending amendment, FA1137, found in this day's Journal, to the Standing Committee amendment.

Senator Chambers withdrew his amendment.

Senator Synowiecki asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1138

Amend AM9013

Strike section 12.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1139

Amend AM9013

Strike section 13.

Senator Price asked unanimous consent to be excused until she returns. No objections. So ordered.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1140

Amend AM9013

Strike section 14.

Senator Chambers withdrew his amendment.

### **SPEAKER BROMM PRESIDING**

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1141

Amend AM9013

Strike section 15.

Senator Chambers moved for a call of the house. The motion prevailed with 23 ayes, 0 nays, and 26 not voting.

The Chambers amendment was adopted with 39 ayes, 0 nays, 4 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1142

Amend AM9013

Strike section 16.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1143

Amend AM9013

Strike section 17.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1144

Amend AM9013

Strike section 18.

Senator Chambers withdrew his amendment.

Senator Brashear moved for a call of the house. The motion prevailed with 38 ayes, 0 nays, and 11 not voting.

The Standing Committee amendment, AM9013, as amended, was adopted with 38 ayes, 5 nays, and 6 excused and not voting.

The Chair declared the call raised.

Senator Chambers requested a record vote on the advancement of the bill.

Voting in the affirmative, 36:

Aguilar	Cudaback	Jensen	Preister	Thompson
Baker	Cunningham	Johnson	Price	Tyson
Bourne	Engel	Jones	Quandahl	Vrtiska
Brashear	Erdman	Kremer	Redfield	Wehrbein
Bromm	Hartnett	Kruse	Schrock	
Brown	Hlava	McDonald	Smith	
Burling	Hudkins	Mossey	Stuhr	
Byars	Janssen	Pederson, D.	Suttle	

Voting in the negative, 7:

Chambers	Foley	Maxwell	Raikes
Connealy	Landis	Pedersen, Dw.	

Excused and not voting, 6:

Beutler	Dierks	Schimek
Coordsen	Robak	Synowiecki

Advanced to E & R for review with 36 ayes, 7 nays, and 6 excused and not voting.

**COMMITTEE ON COMMITTEES PRELIMINARY REPORT**

Senator Dw. Pedersen offered the following preliminary Committee on Committees report:

Senator Mossey has been designated to serve on the Banking, Commerce and Insurance Committee, Natural Resources Committee, and Nebraska Retirement Systems Committee.

**RESOLUTIONS****LEGISLATIVE RESOLUTION 11.** Introduced by Baker, 44.

WHEREAS, the Republican Valley Mustangs Girls' Volleyball team won the 2002 Class D-1 Girls' State High School Volleyball Championship; and

WHEREAS, this is the Republican Valley Mustangs fifth consecutive championship; and

WHEREAS, the members of the team are Jacklynn Stark, Lynette Stitt, Danielle Vontz, Renee Felber, Danely Walkington, Shelby Haag, Stephanie Shellhase, Hannah Loshbaugh, Erin Meyers, Heather Teel, Blaine Shuler, Cayla Skaritka, Brittany McConville, Chelsea Morgan, Lisa Daffer, Savannah Noyes, Lindsay Vontz, Megan Jacobs, Jeanie Bayliss, Annalicia Chaves, Caitlin Schaffert, Bunny Skaritka, Lindsey Esch, Jamie Coolidge, Lindy Reiners, Julie Fritsche, Danielle Stritt, Brooke Heger, Britni McConville, Ashley Mallek, Kayla Brooks and coaches Jenni McConville, Dennis Troester, and Deanne Ruggles; and

WHEREAS, the team exhibited exemplary dedication, discipline and perseverance throughout the season and especially during the state tournament.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature recognizes and congratulates the Republican Valley Mustangs Girls' Volleyball team and its coaches.

2. That a copy of this resolution be sent to Republican Valley High School.

Laid over.

**LEGISLATIVE RESOLUTION 12.** Introduced by Erdman, 47.

WHEREAS, the Paxton Lady Tigers volleyball team won the Class D-2 Girls' State Volleyball Championship on November 16, 2002; and

WHEREAS, Paxton went undefeated throughout the season, compiling a 25-0 record under Coach Jody Rhodes; and

WHEREAS, the 2002 championship gives Paxton High School its third State Volleyball Championship; and

WHEREAS, Kelsey Perlinger won all class honors, all tournament honors, and Class D-2 all tournament honors, and Jena McFadden won Class D-2 all tournament honors; and

WHEREAS, the Paxton girls' volleyball team represented their community with excellence and sportsmanship.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature congratulates the Paxton Lady Tigers volleyball team on their successful season.
2. That a copy of this resolution be sent to the team and Coach Jody Rhodes.

Laid over.

### **VISITORS**

Visitors to the Chamber were FCLA Members Melynda Adams and Ben Keele from the University of Nebraska at Lincoln.

### **MOTION - Adjournment**

Senator Vrtiska moved to adjourn until 9:00 a.m., Wednesday, November 20, 2002.

Senator Chambers requested a roll call vote on the motion to adjourn.

The Vrtiska motion to adjourn prevailed with 42 ayes, 1 nay, and 6 excused and not voting, and at 3:40 p.m., the Legislature adjourned until 9:00 a.m., Wednesday, November 20, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature

**NINTH DAY - NOVEMBER 20, 2002****LEGISLATIVE JOURNAL****NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION****NINTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, November 20, 2002

**PRAYER**

The prayer was offered by Senator Janssen.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Bromm presiding.

The roll was called and all members were present except Senators Bourne, McDonald, Dw. Pedersen, Preister, Schimek, and Suttle who were excused; and Senators Dierks and Landis who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the eighth day was approved.

**SELECT COMMITTEE REPORT  
Enrollment and Review**

**LEGISLATIVE BILL 1.** Placed on Select File as amended.  
(E & R amendment, AM7245, is on file and available in the Clerk's Office, Room 2014.)

(Signed) Philip Erdman, Chairperson

**STANDING COMMITTEE REPORTS  
Nebraska Retirement Systems**

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Nebraska Investment Council  
Earl Scudder

VOTE: Aye: Senators Erdman, Bourne, Stuhr, and Wehrbein. Nay: None.  
Absent: None.

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

State Investment Officer  
Carol Kontor

VOTE: Aye: Senators Erdman, Bourne, Stuhr, and Wehrbein. Nay: None.  
Absent: None.

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Nebraska Investment Council  
Gail Werner-Robertson

VOTE: Aye: Senators Erdman, Bourne, Stuhr, and Wehrbein. Nay: None.  
Absent: None.

(Signed) Philip Erdman, Vice Chairperson

### SELECT FILE

**LEGISLATIVE BILL 3.** Senator Coordsen renewed his pending amendment, AM9034, found on page 65.

The Coordsen amendment was adopted with 34 ayes, 0 nays, 7 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 1.** E & R amendment, AM7245, found in this day's Journal, was adopted.

Senator Chambers offered the following amendment:  
AM9036

(Amendments to E & R amendments, AM7245)

- 1 1. Insert the following new sections:
- 2 "Section 1. The Legislature finds that:
- 3 (1) It is unwholesome when a state and the legislative
- 4 and executive departments are held hostage due to the legislative
- 5 skill, brainpower, will, and tenacity of one man, State Senator
- 6 Ernie Chambers;
- 7 (2) It is embarrassing and detrimental to the reputation
- 8 and image of the State of Nebraska that one man, State Senator
- 9 Ernie Chambers, is so feared and disliked by so many citizens of
- 10 the State of Nebraska that he has been enshrined in the
- 11 Constitution of the State of Nebraska; that is, the Constitution



12 was amended pursuant to a successful citizens' petition to impose  
13 term limits on members of the Legislature with the expressed intent  
14 and purpose to turn one man, State Senator Ernie Chambers, out of  
15 office even though the unavoidable, negative consequence is to turn  
16 all members of the Legislature out of office;

17 (3) The Legislature, session after futile session, has  
18 amended its own rules in an unsuccessful campaign to curb the  
19 legislative effectiveness and influence of one man, State Senator  
20 Ernie Chambers;

21 (4) The Governor has publicly criticized, disparaged, and  
22 condemned State Senator Ernie Chambers and vetoed his bills but has  
23 failed to nullify, thereby, his continuing (and maddening) impact  
1 and influence on the course of public and governmental affairs;

2 (5) It is imprudent, as well as embarrassing, that the  
3 Governor called a special session of the Legislature pursuant to  
4 his publicly announced aim to stifle and circumvent one man, State  
5 Senator Ernie Chambers, and thereby attempt to restrict and limit  
6 full and robust debate on an extraordinarily grave and complex  
7 issue of profound public interest: The death penalty; and

8 (6) Because the public mind is disturbed and the  
9 transaction of the state's business is crippled when one man, State  
10 Senator Ernie Chambers, so dominates the legislative and executive  
11 departments and when state policy is formulated around the flawed  
12 strategy of stifling, conquering, and shutting him up, there is a  
13 compelling necessity to enact appropriate legislation to meet and  
14 remedy such a threat to political order, governmental tranquility,  
15 and the independence of the legislative and executive departments.

16 Sec. 2. Being Ernie Chambers and a member of the  
17 Legislature on and after the effective date of this act is a Class  
18 I felony.

19 Sec. 3. Section 28-101, Revised Statutes Supplement,  
20 2002, is amended to read:

21 28-101. Sections 28-101 to 28-1348 and sections 1 and 2  
22 of this act shall be known and may be cited as the Nebraska  
23 Criminal Code."

24 2. On page 15, lines 4 and 10; and page 16, line 21,  
25 after "28-303" insert "or section 2 of this act".

26 3. On page 23, after line 19 insert the following new  
27 paragraph:

1 "Upon the court being satisfied that the offender has, in  
2 fact and law, resigned from the Legislature, the conviction against  
3 the offender of violating section 2 of this act shall be set aside  
4 and the offender shall be immediately discharged from custody with  
5 the stern warning that it will not go so well for the offender  
6 should the offender be guilty of recidivism."

7 4. On page 25, line 4, strike "or" and show as stricken;  
8 in line 8 before the period insert

9 ": or

10 (j) The offender convicted of violation of section 2 of

11 this act refuses to resign from the Legislature prior to the  
 12 imposition of sentence"; and in line 23 strike the second "or" and  
 13 show as stricken.

14 5. On page 26, line 1, before the period insert

15 "or

16 (h) The offender convicted of violating section 2 of this  
 17 act submits to the court a letter of resignation from the  
 18 Legislature and proof that such resignation has been legally  
 19 effectuated"; and in line 5 strike "section 13" and insert  
 20 "sections 1, 2, and 16".

21 6. Renumber the remaining sections and correct internal  
 22 references and the repealer accordingly.

Senator Chambers moved for a call of the house. The motion prevailed with 33 ayes, 0 nays, and 16 not voting.

Senator Chambers requested a record vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 35:

Aguilar	Connealy	Hartnett	Kremer	Redfield
Baker	Coordsen	Hlava	Kruse	Schrock
Beutler	Cudaback	Hudkins	Landis	Smith
Brashear	Cunningham	Janssen	Mossey	Synowiecki
Bromm	Engel	Jensen	Pederson, D.	Thompson
Burling	Erdman	Johnson	Price	Vrtiska
Byars	Foley	Jones	Raikes	Wehrbein

Present and not voting, 6:

Brown	Quandahl	Stuhr
Maxwell	Robak	Tyson

Excused and not voting, 7:

Bourne	McDonald	Preister	Suttle
Dierks	Pedersen, Dw.	Schimek	

The Chambers amendment lost with 1 aye, 35 nays, 6 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Senator Beutler offered the following amendment:  
 AM9035

(Amendments to Standing Committee amendments, AM7245)

- 1 1. On page 16, line 14, strike the second "the" and
- 2 insert "(i) the changes to subdivision (1)(d) of section 29-2523
- 3 are prospective and shall only apply to crimes committed on or
- 4 after the effective date of this act and (ii) the other".
- 5 2. On page 24, line 18, after "atrocious," insert "or";
- 6 and strike beginning with the last comma in line 18 through
- 7 "intelligence" in line 20, show as stricken, and insert "in that it
- 8 involved torture or serious physical abuse beyond that necessary to
- 9 produce death".

## SENATOR CUDABACK PRESIDING

## SPEAKER BROMM PRESIDING

Senator Beutler moved for a call of the house. The motion prevailed with 33 ayes, 0 nays, and 16 not voting.

Senator Beutler requested a roll call vote on his amendment.

Voting in the affirmative, 8:

Beutler	Kruse	Maxwell	Robak
Connealy	Landis	Redfield	Thompson

Voting in the negative, 33:

Aguilar	Chambers	Hlava	Mossey	Stuhr
Baker	Coordsen	Hudkins	Pederson, D.	Synowiecki
Brashear	Cudaback	Janssen	Price	Tyson
Bromm	Cunningham	Jensen	Quandahl	Vrtiska
Brown	Engel	Johnson	Raikes	Wehrbein
Burling	Erdman	Jones	Schrock	
Byars	Hartnett	Kremer	Smith	

Present and not voting, 2:

Dierks	Foley
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Excused and not voting, 6:

Bourne	Pedersen, Dw.	Schimek
McDonald	Preister	Suttle

The Beutler amendment lost with 8 ayes, 33 nays, 2 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator Chambers requested a machine vote on the advancement of the bill.

Advanced to E & R for engrossment with 36 ayes, 7 nays, and 6 excused and not voting.

### **EASE**

The Legislature was at ease from 10:57 a.m. until 11:19 a.m.

### **SENATOR CUDABACK PRESIDING**

#### **SELECT COMMITTEE REPORTS**

##### **Enrollment and Review**

##### **Correctly Engrossed**

The following bills were correctly engrossed: LBs 1 and 3.

(Signed) Philip Erdman, Chairperson

### **VISITORS**

Visitors to the Chamber were Alexander Gibb from Hamburg, Germany, Ulrike Kanert from Parchim, Germany, and Ronda Vondra from Fremont; and Senator Coordsen's wife, Janice, and sisters-in-law and nieces, Luella Windhorst from Hebron, Gloria Reinboth and Maurine Wassom from Deshler, and Lisa Reinboth and Merry Kellogg from Lincoln.

### **ADJOURNMENT**

At 11:20 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 10:00 a.m., Thursday, November 21, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature

**TENTH DAY - NOVEMBER 21, 2002****LEGISLATIVE JOURNAL****NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION****TENTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, November 21, 2002

**PRAYER**

The prayer was offered by Senator Redfield.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 10:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Brashear, Dierks, Landis, Maxwell, Robak, Schimek, and Suttle who were excused; and Senator Beutler who was excused until he arrives.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the ninth day was approved.

**REPORTS**

The following reports were received by the Legislature:

**Health and Human Services System**

Report to Governor and Legislature on the LB 8 Changes to Medicaid Eligibility, November 18, 2002

**Information Technology Commission**

Progress Report to the Governor and Legislature, November 15, 2002

Recommendations on Technology Investments to the Governor and Legislature, FY2003-05 Biennium

**Legislative Fiscal Office**

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2002. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced October 25, 2002. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

**Revenue, Department of**

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2002. Monthly receipt estimates derived from the annual net receipt

estimate of the Economic Forecasting Advisory Board produced October 25, 2002. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

### **COMMITTEE ON COMMITTEES REPORT**

Senator Dw. Pedersen moved to approve the Committee on Committees report found on page 69.

The Committee on Committees report was approved with 33 ayes, 0 nays, 8 present and not voting, and 8 excused and not voting.

### **UNANIMOUS CONSENT - Member Excused**

Senator Wehrbein asked unanimous consent to be excused. No objections. So ordered.

### **MOTIONS - Approve Appointments**

Senator Janssen moved the adoption of the General Affairs Committee report for the confirmation of the following appointment found on page 65:

State Electrical Board  
George M. Morrissey

Voting in the affirmative, 33:

Aguilar	Cunningham	Janssen	Pedersen, Dw.	Smith
Baker	Engel	Jensen	Pederson, D.	Stuhr
Bourne	Erdman	Johnson	Preister	Synowiecki
Bromm	Foley	Kremer	Quandahl	Thompson
Byars	Hartnett	Kruse	Raikes	Vrtiska
Coordsen	Hlava	McDonald	Redfield	
Cudaback	Hudkins	Mossey	Schrock	

Voting in the negative, 0.

Present and not voting, 7:

Brown	Chambers	Jones	Tyson
Burling	Connealy	Price	

Excused and not voting, 9:

Beutler	Dierks	Maxwell	Schimek	Wehrbein
Brashear	Landis	Robak	Suttle	

The appointment was confirmed with 33 ayes, 0 nays, 7 present and not voting, and 9 excused and not voting.

Senator Erdman moved the adoption of the Nebraska Retirement Systems Committee report for the confirmation of the following appointment found on page 71:

Nebraska Investment Council  
Earl Scudder

Voting in the affirmative, 30:

Aguilar	Coordsen	Hlava	McDonald	Raikes
Bourne	Cudaback	Hudkins	Mossey	Redfield
Bromm	Cunningham	Janssen	Pederson, D.	Schrock
Brown	Engel	Johnson	Preister	Stuhr
Byars	Erdman	Kremer	Price	Synowiecki
Connealy	Foley	Kruse	Quandahl	Vrtiska

Voting in the negative, 0.

Present and not voting, 10:

Baker	Chambers	Jensen	Pedersen, Dw.	Thompson
Burling	Hartnett	Jones	Smith	Tyson

Excused and not voting, 9:

Beutler	Dierks	Maxwell	Schimek	Wehrbein
Brashear	Landis	Robak	Suttle	

The appointment was confirmed with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

Senator Erdman moved the adoption of the Nebraska Retirement Systems Committee report for the confirmation of the following appointment found on page 72:

State Investment Officer  
Carol Kontor

Voting in the affirmative, 31:

Aguilar	Coordsen	Hudkins	Pederson, D.	Stuhr
Baker	Cudaback	Janssen	Preister	Synowiecki
Bourne	Cunningham	Johnson	Price	Vrtiska
Bromm	Engel	Kremer	Quandahl	
Brown	Erdman	Kruse	Raikes	
Byars	Foley	McDonald	Redfield	
Connealy	Hlava	Mossey	Schrock	

Voting in the negative, 0.

Present and not voting, 10:

Beutler	Chambers	Jensen	Pedersen, Dw.	Thompson
Burling	Hartnett	Jones	Smith	Tyson

Excused and not voting, 8:

Brashear	Landis	Robak	Suttle
Dierks	Maxwell	Schimek	Wehrbein

The appointment was confirmed with 31 ayes, 0 nays, 10 present and not voting, and 8 excused and not voting.

Senator Erdman moved the adoption of the Nebraska Retirement Systems Committee report for the confirmation of the following appointment found on page 72:

Nebraska Investment Council  
Gail Werner-Robertson

Voting in the affirmative, 31:

Aguilar	Coordsen	Hlava	Pedersen, Dw.	Synowiecki
Bourne	Cudaback	Hudkins	Price	Tyson
Bromm	Cunningham	Janssen	Quandahl	Vrtiska
Brown	Engel	Kremer	Raikes	
Burling	Erdman	Kruse	Redfield	
Byars	Foley	McDonald	Schrock	
Connealy	Hartnett	Mossey	Stuhr	

Voting in the negative, 0.

Present and not voting, 10:

Baker	Chambers	Johnson	Pederson, D.	Smith
Beutler	Jensen	Jones	Preister	Thompson

Excused and not voting, 8:

Brashear	Landis	Robak	Suttle
Dierks	Maxwell	Schimek	Wehrbein

The appointment was confirmed with 31 ayes, 0 nays, 10 present and not voting, and 8 excused and not voting.

### VISITORS

Visitors to the Chamber were exchange students Hendrik Stahmer, Maik Ulrich, and Tim Poeschel from Germany and host parent and son, Keith and Noah Waeger from Beatrice.



**ADJOURNMENT**

At 10:18 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, November 22, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature



**ELEVENTH DAY - NOVEMBER 22, 2002****LEGISLATIVE JOURNAL****NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION****ELEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Friday, November 22, 2002

**PRAYER**

The prayer was offered by Senator Connealy.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Bromm presiding.

The roll was called and all members were present except Senators Hartnett, Landis, and Schimek who were excused; and Senators Beutler and Johnson and who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the tenth day was approved.

**RESOLUTIONS**

Pursuant to Rule 4, Section 5(b), LR 4 and 5 were adopted.

**SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR 4 and 5.

**MOTION - Return LB 1 to Select File**

Senator Chambers moved to return LB 1 to Select File for the following specific amendment:

FA1145

Strike the enacting clause.

**SENATOR COORDSEN PRESIDING**

Senator Chambers withdrew his motion to return.

**BILLS ON FINAL READING****Dispense With Reading at Large**

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 1 with 41 ayes, 2 nays, 2 present and not voting, and 4 excused and not voting.

The following bill was put upon final passage:

**LEGISLATIVE BILL 1. With Emergency.**

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-303, 29-1602, 29-1603, 29-2027, 29-2519, 29-2520, 29-2521, 29-2522, 29-2524, and 83-1,105.01, Reissue Revised Statutes of Nebraska, and sections 28-105, 28-105.01, 29-2004, 29-2204, 29-2261, and 29-2523, Revised Statutes Supplement, 2002; to change provisions relating to Class I and Class IA felonies; to state intent; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 37:

Aguilar	Connealy	Janssen	Pederson, D.	Suttle
Baker	Coordsen	Jensen	Preister	Thompson
Bourne	Cudaback	Johnson	Price	Tyson
Brashear	Cunningham	Jones	Quandahl	Vrtiska
Bromm	Engel	Kremer	Redfield	Wehrbein
Brown	Erdman	Kruse	Schrock	
Burling	Hlava	McDonald	Smith	
Byars	Hudkins	Mossey	Stuhr	

Voting in the negative, 8:

Chambers	Foley	Pedersen, Dw.	Robak
Dierks	Maxwell	Raikes	Synowiecki

Excused and not voting, 4:

Beutler	Hartnett	Landis	Schimek
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

The following bill was read and put upon final passage:

**LEGISLATIVE BILL 3.** With Emergency.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-seventh Legislature, Third Special Session, 2002; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 45:

Aguilar	Connealy	Hudkins	Mossey	Schrock
Baker	Coordsen	Janssen	Pedersen, Dw.	Smith
Bourne	Cudaback	Jensen	Pederson, D.	Stuhr
Brashear	Cunningham	Johnson	Preister	Suttle
Bromm	Dierks	Jones	Price	Synowiecki
Brown	Engel	Kremer	Quandahl	Thompson
Burling	Erdman	Kruse	Raikes	Tyson
Byars	Foley	Maxwell	Redfield	Vrtiska
Chambers	Hlava	McDonald	Robak	Wehrbein

Voting in the negative, 0.

Excused and not voting, 4:

Beutler	Hartnett	Landis	Schimek
---------	----------	--------	---------

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

**RESOLUTIONS**

**LEGISLATIVE RESOLUTION 6.** Read. Considered.

**LEGISLATIVE RESOLUTION 7.** Read. Considered.

**LEGISLATIVE RESOLUTION 8.** Read. Considered.

**SPEAKER BROMM PRESIDING**

**LEGISLATIVE RESOLUTION 9.** Read. Considered.

**LEGISLATIVE RESOLUTION 10.** Read. Considered.

**LEGISLATIVE RESOLUTION 11.** Read. Considered.

**LEGISLATIVE RESOLUTION 12.** Read. Considered.

Pursuant to Rule 4, Section 5, LR 6, 7, 8, 9, 10, 11, and 12 were adopted with 39 ayes, 0 nays, 6 present and not voting, and 4 excused and not voting.

### **SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 1 and 3, and LR 6, 7, 8, 9, 10, 11, and 12.

### **MOTION - Notify Governor**

Senator Suttle moved that a committee of five be appointed to notify the Governor that the Ninety-Seventh Legislature, Third Special Session of the Nebraska Legislature, is about to complete its work, and to return with any message the Governor may have for the Legislature.

The motion prevailed.

The Chair appointed Senators Hudkins, Janssen, Jensen, Preister, and Price to serve on said committee.

The committee returned and escorted Governor Mike Johanns to the rostrum where he delivered a message to the members.

The committee escorted Governor Johanns from the Chamber.

### **PRESENTED TO THE GOVERNOR**

Presented to the Governor on November 22, 2002, at 9:40 a.m. were the following: LBs 1 and 3.

(Signed) Carol Koranda  
Clerk of the Legislature's Office

### **MESSAGE FROM THE GOVERNOR**

November 22, 2002

Patrick J. O'Donnell  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 1e and 3e were received in my office on November 22, 2002.

I signed the legislative bills listed above on November 22, 2002, and they were delivered to the Secretary of State.

Sincerely,  
(Signed) Mike Johanns  
Governor

**MOTION - Approve Journal**

Senator Robak moved that the Journal for the Eleventh Day, as prepared by the Clerk of the Legislature, be approved.

The motion prevailed.

**MOTION - Adjourn Sine Die**

Senator Dierks moved that the Ninety-Seventh Legislature, Third Special Session of the Nebraska Legislature, having finished all business before it, now at 10:33 a.m., adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell  
Clerk of the Legislature





**CHRONOLOGY OF BILLS**  
**NINETY-SEVENTH LEGISLATURE**  
**THIRD SPECIAL SESSION**  
**2002**

**LEGISLATIVE BILL 1. By Speaker Bromm, at the request of the Governor**

Nov. 7	Read first time	16
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 18	Placed on General File - Com AM9013 (printed separate)	49
Nov. 18	Brashear name added	49
Nov. 18	Com AM9013 (printed separate) pending. Brashear AM9028 and AM9029 to Com AM9013 adopted. Chair sustained request for division of question on Beutler-Connealy-Hartnett AM9027 to Com AM9013. Beutler-Connealy-Hartnett FA1126 (1st) to Com AM9013 adopted. Beutler-Connealy-Hartnett FA1125 (2nd) to Com AM9013 pending	49
Nov. 18	Beutler et al. pending FA1125 (2nd) lost. Chambers motion to recommit to committee withdrawn. Chambers FA1127, FA1128, FA1129, FA1130, and FA1131 to Com AM9013 withdrawn. Chambers FA1132 to Com AM9013 lost	58
Nov. 19	Chambers FA1133 to Com AM9013 withdrawn	63
Nov. 19	Chambers FA1134, FA1135, and FA1136 to Com AM9013 withdrawn. Chambers FA1137 to Com AM9013 pending	64
Nov. 19	Chambers pending FA1137 p. 64 withdrawn. Chambers FA1138, FA1139, and FA1140 to Com AM9013 withdrawn. Chambers FA1141 to Com AM9013 adopted. Chambers FA1142, FA1143, and FA1144 to Com AM9013 withdrawn. Com AM9013 adopted as amended. Advanced for Review	66
Nov. 20	Placed on Select File - AM7245 (on file)	71
Nov. 20	AM7245 (E & R) (on file) adopted. Chambers AM9036 and Beutler AM9035 to AM7245 lost. Advanced for Engrossment	72
Nov. 20	Correctly Engrossed	76
Nov. 22	Chambers motion to return to Select File for specific FA1145 withdrawn	83
Nov. 22	Dispensing of reading at large approved. Final Reading w/E 37-8-4	84
Nov. 22	Speaker signed	86
Nov. 22	Presented to Governor (11/22)	86
Nov. 22	Approved by Governor (11/22)	86

**LEGISLATIVE BILL 2. By Speaker Bromm, at the request of the Governor**

Nov. 7	Read first time	16
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 19	Indefinitely postponed	63

**LEGISLATIVE BILL 3. By Speaker Bromm, at the request of the Governor**

Nov. 7	Read first time	17
Nov. 7	Placed on General File	22
Nov. 15	Coorsen name added	45
Nov. 15	Advanced for Review	45
Nov. 18	Placed on Select File	57
Nov. 19	Coorsen AM9034 printed	65
Nov. 20	Coorsen pending AM9034 p. 65 adopted. Advanced for Engrossment	72
Nov. 20	Correctly Engrossed	76
Nov. 22	Final Reading w/E 45-0-4	85
Nov. 22	Speaker signed	86
Nov. 22	Presented to Governor (11/22)	86
Nov. 22	Approved by Governor (11/22)	86

**LEGISLATIVE BILL 4. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 13	Notice of hearing (11/14)	35
Nov. 18	Indefinitely postponed	49

**LEGISLATIVE BILL 5. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 6. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 7. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 8. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 9. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 10. By Chambers**

Nov. 7	Read first time	17
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 11. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 13	Notice of hearing (11/14)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 12. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 13. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 13	Notice of hearing (11/14)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 14. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 15. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 16. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 13	Notice of hearing (11/14)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 17. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 18. By Chambers**

Nov. 7	Read first time	18
Nov. 7	Referred to Judiciary Committee	22
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 19. By Chambers**

Nov. 7	Read first time	19
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 18	Indefinitely postponed	49

**LEGISLATIVE BILL 20. By Beutler**

Nov. 7	Read first time	20
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 21. By Raikes**

Nov. 7	Read first time	20
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 22. By Raikes**

Nov. 7	Read first time	21
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 23. By Chambers**

Nov. 8	Read first time	27
Nov. 8	Referred to Judiciary Committee	28
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 24. By Chambers**

Nov. 8	Read first time	27
Nov. 8	Referred to Judiciary Committee	28
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 25. By Chambers**

Nov. 8	Read first time	27
Nov. 8	Referred to Judiciary Committee	28
Nov. 12	Notice of hearing (11/13)	30
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 26. By Chambers**

Nov. 8	Read first time	27
Nov. 8	Referred to Judiciary Committee	28
Nov. 13	Notice of hearing (11/14)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 27. By Chambers**

Nov. 12	Read first time	30
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/14)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 28. By Chambers**

Nov. 12	Read first time	30
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/14)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 29. By Chambers**

Nov. 12	Read first time	30
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 30. By Chambers**

Nov. 12	Read first time	30
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 31. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 32. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 33. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	35
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 34. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	36
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 35. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	36
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 36. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/15)	36
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 37. By Chambers**

Nov. 12	Read first time	31
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/14)	35
Nov. 18	Indefinitely postponed	49

**LEGISLATIVE BILL 38. By Chambers**

Nov. 12	Read first time	32
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/14)	35
Nov. 18	Indefinitely postponed	49

**LEGISLATIVE BILL 39. By Chambers**

Nov. 12	Read first time	32
Nov. 12	Referred to Judiciary Committee	32
Nov. 13	Notice of hearing (11/14)	35
Nov. 18	Indefinitely postponed	49

**CHRONOLOGY OF CONSTITUTIONAL AMENDMENTS  
AND RESOLUTIONS REFERRED TO COMMITTEE**

**NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION  
2002**

**LEGISLATIVE RESOLUTION 3CA. By Beutler**

Nov. 7	Read first time. Referred to Reference Committee	21
Nov. 7	Referred to Judiciary Committee	22
Nov. 8	Notice of hearing (11/12)	25
Nov. 22	Indefinitely postponed pursuant to Rule 9, Sec. 8	

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REFERRED TO COMMITTEE**

**NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION  
2002**

**CHRIS BEUTLER**

**LB**  
20 Change death penalty sentencing procedures and the method of inflicting the death penalty

**LR**  
3 CA Constitutional amendment to restrict powers of the Board of Pardons regarding sentences of life imprisonment without parole

**KERMIT A. BRASHEAR**

**LB**  
1 \*\*\* Change provisions relating to Class I and Class IA felonies

**CURT BROMM**

**LB**  
1 \*\*\* Change provisions relating to Class I and Class IA felonies  
2 \*\* Change the method of inflicting the death penalty  
3 \*\*\* Appropriate funds for special session expenses

**ERNIE CHAMBERS**

**LB**  
4 Establish a capital offense and provide for sentencing procedures  
5 Change provisions relating to murder in the first degree  
6 Change provisions relating to murder in the first degree  
7 Change provisions relating to murder in the first degree  
8 Change provisions relating to murder in the first degree  
9 Change provisions relating to murder in the first degree  
10 Change provisions relating to murder in the first degree  
11 Prohibit imposition of the death penalty upon circumstantial evidence  
12 Change punishment for certain murders  
13 Refine the term premeditation  
14 Change provisions relating to murder in the first degree  
15 Change provisions relating to murder in the first degree  
16 Change provisions relating to murder in the first degree  
17 Change provisions relating to murder in the first degree  
18 Change provisions relating to murder in the first degree  
19 Abolish the death penalty  
23 Change the manner of carrying out a sentence of death  
24 Change the manner of carrying out a sentence of death to death by old age



- 25 Change the manner of carrying out a sentence of death to decapitation by guillotine
- 26 Require the Governor, Attorney General, and Secretary of State to be present during executions
- 27 Change provisions relating to mitigating circumstances
- 28 Change provisions relating to mitigating circumstances and a burden of proof
- 29 Change provisions relating to aggravating circumstances
- 30 Change provisions relating to aggravating circumstances
- 31 Change provisions relating to aggravating circumstances
- 32 Change provisions relating to aggravating circumstances
- 33 Change provisions relating to aggravating circumstances
- 34 Change provisions relating to aggravating circumstances
- 35 Change provisions relating to aggravating circumstances
- 36 Change provisions relating to aggravating circumstances
- 37 Require proof to a certainty for Class I felony sentence
- 38 Provide that death penalty views are irrelevant in juror selection
- 39 Prohibit convictions based on certain evidence

**GEORGE COORDSEN**

**LB**

- 3 \*\*\* Appropriate funds for special session expenses

**RON RAIKES**

**LB**

- 21 Reclassify a category of murder in the first degree
- 22 Decriminalize a category of murder in the first degree

- \* With others.
- \*\* At the request of the Governor.
- \*\*\* With others and at the request of the Governor.

**LEGISLATIVE BILLS AND RESOLUTIONS  
HEARD BY COMMITTEE**

**NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION  
2002**

**Judiciary**

Chairperson - Kermit A. Brashear

1	2	4	5	6	7
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38	39	LR3CA			

**SUMMARY OF LEGISLATION**  
**NINETY-SEVENTH LEGISLATURE**  
**THIRD SPECIAL SESSION**  
**2002**

**The following table shows the final disposition**

**Length 11 days**

Number of Bills Introduced: 39  
 Number of Resolutions Introduced: 12  
 Number of CA Resolutions Introduced: 1  
 Number of Bills to Become Law: 2

Approved by Governor (2):

1e                      3e

Indefinitely Postponed (38):

2	4	5	6	7	8
9	10	11	12	13	14
15	16	17	18	19	20
21	22	23	24	25	26
27	28	29	30	31	32
33	34	35	36	37	38
39	LR3CA				

Resolutions Adopted (11):

1	2	4	5	6	7
8	9	10	11	12	

(Totals in parentheses include bills, A bills, and resolutions of each section.)

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- 2 Recognize the members of the 2002 Papillion-LaVista High School marching band for their accomplishments (Thompson)..... 19, 61
- 3CA Constitutional amendment to restrict powers of the Board of Pardons regarding sentences of life imprisonment without parole (Beutler)..... 21, 22, 25
- 4 Congratulate Brian Bartels for earning the rank of Eagle Scout (Foley)..... 26, 83
- 5 Congratulate Park Sloup for earning the rank of Eagle Scout (Foley)..... 26, 83
- 6 Congratulate Steven J. Hansen for earning the rank of Eagle Scout (Johnson)..... 41, 85, 86
- 7 Congratulate Dr. James Wiest, professor of sociology at Hastings College, for being named 2002 Professor of the Year (Burling)..... 42, 85, 86
- 8 Congratulate Andrew Dodendorf for earning the rank of Eagle Scout (Aguilar)..... 42, 85, 86
- 9 Congratulate the Papillion-LaVista High School volleyball team and coaches for winning the Class A state championship (Thompson)..... 57, 85, 86
- 10 Congratulate Jeffrey Deal for earning the rank of Eagle Scout (Burling)..... 60, 85, 86
- 11 Congratulate the Republican Valley High School volleyball team and coaches for winning the Class D-1 state championship (Baker)..... 69, 85, 86
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